TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~498~~ 32

WILLIAM H. MOORE, WILLIAM C. MITCHELL, ET AL., APPELLANTS,

vs.

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX OF NATHAN WEBB, DECEASED, AND DAVID L. HUNTINGTON, HER HUSBAND.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED NOVEMBER 29, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 433.

WILLIAM H. MOORE, WILLIAM C. MITCHELL, ET AL., APPELLANTS,

vs.

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX OF NATHAN WEBB, DECEASED, AND DAVID L. HUNTINGTON, HER HUSBAND.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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a GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Volume 1.

b Supreme court Territory of New Mexico.

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband, appellees,
vs.
WILLIAM H. MOORE AND WILLIAM C. Mitchell, appellants.

Be it remembered that on the 22nd day of December, A. D. 1870, the following transcript of the record of the district court for the first judicial district of the Territory of New Mexico, in the above-entitled cause, was filed in the office of the clerk of the supreme court of said Territory; which said transcript is in the words and figures following, to wit:

1 In chancery. First judicial district court, Mora County.

TRANSCRIPT.

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX of the estate of Nathan Webb, deceased, and David L. Huntington, her husband,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL. } Volume 1. Pages 1 to 308.

Filed in my office this 22nd day of December, A. D. 1870.
W'M BREEDEN,
Clerk Supreme Court.

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9 In chancery. First judicial district court, county of Mora.

GERTRUDE E. WEBB, ADMINISTRATRIX OF the estate of Nathan Webb, deceased,
vs.
WILLIAM H. MOORE AND WILLIAM C. Mitchell.

Be it remembered that on the 22nd day of January, A. D. 1869, the following bill in chancery was filed in the office of the clerk of the United States district court for the first judicial district of the Territory of New Mexico; which said bill is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

In the district court of the first judicial district, sitting in the county of Mora, Territory of New Mexico, for the trial of causes aris-
10 ing under the laws of the Territory, at the March term, A. D. D. 1869.

To the Hon. John S. Watts, chief justice of the supreme court of said Territory, and judge of the first judicial district court thereof, in chancery sitting:

Your oratrix, Gertrude Elizabeth Webb, a resident of the county of

Mora, aforesaid, administratrix of the estate of Nathan Webb, deceased, and heir-at-law of the personal estate of her said deceased husband, brings this her bill of complaint against William H. Moore, a resident of said county of Mora, and William C. Mitchell, a resident of the city of St. Louis, in the State of Missouri, formerly partners jointly with said Nathan Webb, in his life-time, in a mercantile firm, doing business under the firm-name and style of W. H. Moore & Co., and now surviving partners of said firm.

11 And thereupon humbly complaining your oratrix would show unto your honor that on or about the fourteenth day of September, in the year of our Lord one thousand eight hundred and sixty-two, she intermarried with said Nathan Webb, according to the rites and ceremonies of the Episcopal Church, at Fort Union, New Mexico; that she, with her said husband, resided at Fort Union from the time of their said marriage until the twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-three, when they removed to Franklin, El Paso County, in the State of Texas, where they resided from the time last aforesaid, until the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-six, at which last-named time and place the said Nathan Webb departed this life, intestate; that they had but one child, Julia Webb, the fruit of said marriage, who died previous to the death of her said father, Nathan Webb.

12 That upon the death of her said husband, your oratrix took out letters of administration on his estate, from the probate court of said county of El Paso, in the State of Texas. A copy of said letters is herewith filed and marked Ex. A, and prayed to be made a part of this your oratrix' bill of complaint, with leave to refer as often as may be necessary.

Your oratrix would further state that on the twenty-second day of July, in the year of our Lord one thousand eight hundred and sixty-eight, ancillary letters of administration were granted her by the probate court of the county of Mora, aforesaid, as by a copy of said letters herewith filed and marked Ex. B, and prayed to be made a part of this bill with leave to refer, &c., will more fully appear.

13 Your oratrix would further state and show unto your honor that, by the laws of the State of Texas, she is the sole heir of the personal estate of her said husband, he having died intestate, and without issue as aforesaid.

Your oratrix would further state that some time in the year of our Lord one thousand eight hundred and fifty-nine, as your oratrix is informed and believes, her said husband and said defendants entered into and formed a copartnership for the purpose of carrying on and transacting the business of post-sutlers at said Fort Union, and, also, as general dealers in merchandise and contractors to furnish supplies to the troops stationed at the various military posts in said Territory, under the firm-name and style of W. H. Moore & Co.; that her said husband furnished and paid into said copartnership, as she is informed and believes, the sum of fifteen thousand dollars in cash, and agreed further with said defendants to take charge of the books and do and

14 perform the duties of cashier of said copartnership, and in consideration thereof, it was agreed between said copartners that her said husband, Nathan Webb, and said defendants should be equally interested from the time of the commencement of said copartnership, in all the business of said copartnership, and share equally and alike in all the profits resulting from the same.

It was further agreed between the said defendants and her said husband that at the time of entering into said copartnership the said Nathan Webb should not in any manner be liable or responsible in any wise for the debts and liabilities of the firm of Moore & Reese, of which said defendant, William H. Moore, had been formerly a member and partner.

Your oratrix is informed and believes and so states unto your honor that the terms, conditions, and undertakings of said copartnership were reduced to writing, but that said writing and agreement of copart-
15 nership, if not lost or destroyed, is not in the possession or control of your oratrix. but she charges that, if the same is in existence, it is in the possession and control of the said defendants.

Your oratrix would further state that said defendants and her said husband continued to carry on and transact the business of said copartnership at Fort Union, New Mexico, from the time of the commencement of the same, until some time in the year of our Lord one thousand eight hundred and sixty-three, with very fair success and comparatively few losses; that during said time your oratrix cannot now state the exact amount of annual profits that accrued to said firm, but she believes and charges they would exceed the sum of twenty thousand dollars per annum, as the books and papers of said copartnership now in the possession of said defendants at said Fort Union will probably show.

16 Your oratrix would further state and show unto your honor that, early in the year one thousand eight hundred and sixty-three, it was agreed by and between her said husband and said defendants to extend the business of said copartnership to Southern New Mexico and El Paso County, Texas, upon the same terms and conditions, as your oratrix is informed and believes, as when first commenced, with the exception that said deceased Nathan Webb, instead of continuing as bookkeeper and cashier of said firm, as aforesaid, should thenceforth take charge of, control, and direct the business of said copartnership in Southern New Mexico and El Paso County, Texas, under the firm name and style of N. Webb & Co., the interest of her said husband in the whole business of the firms of W. H. Moore & Co. and N. Webb & Co., both in Texas and New Mexico, being equal and the same; that said defendant William H. Moore should remain at Fort Union, New Mexico,
17 and that said defendant William C. Mitchell should remain in the States for the purpose of purchasing and shipping goods to New Mexico, in behalf of and in the interest of said copartnership.

Your oratrix would further state that, in accordance with said last-mentioned agreement, her said deceased husband, on the twenty-sixth day of February, A. D. one thousand eight hundred and sixty-three, as said copartner and member of said firms, established a large store at Mesilla, New Mexico, and furnished the same with the goods of said firm, and on the tenth day of April next following, moved the same to Franklin, Texas, and re-established said store at said place, the same being at that time the headquarters of the then military district of Arizona, in the military department of New Mexico, where a large body of United States troops were continually stationed, at which
18 town of Franklin he carried on and transacted as such partner and for said copartnership, a large wholesale and retail business in goods, wares, and merchandise, as also often contractor to furnish supplies to the United States troops stationed at said town and in said military district; that he gave his entire time and devoted his best energies to the carrying on and furthering the interest and business of

said copartnership, oftentimes obtaining large contracts to furnish supplies to said troops on the part of said copartnership, from which large sums of money were made and accumulated for the benefit of said copartnership.

Your oratrix further states that, in addition to the store established at Franklin, Texas, as aforesaid, the said defendants and her said deceased husband, also some time in the year , became post-sutlers at Fort Bliss, Texas, which said business her said deceased husband superintended and directed, and that he continued to carry on and transact the business of said copartnership at said town of Franklin and the military post of Fort Bliss, until the time of his death, during all which time, your oratrix is informed and believes, and so states, that said copartnership was successful in all of their business affairs, both at Franklin, Fort Union, Fort Bliss, and elsewhere; and that from the time her said deceased husband commenced business as a partner at Mesilla and Franklin as aforesaid up to the time of his said decease, made and gained, as clear profits upon their entire business transactions, above one hundred thousand dollars per annum, and that the said defendant William H. Moore, on several occasions and in various letters to her deceased husband, declared that said copartnership had acquired during the war of the rebellion several hundred thousand dollars, often receiving at their said store in Fort Union more than two thousand dollars per day.

Your oratrix would further state that a large portion of the correspondence, and particularly all the letters of the said defendant William H. Moore to her deceased husband, relative to the amount of profits declared by said copartnership from the year A. D. 1863 to 1866, and relative to the interest of her said deceased husband in said copartnership, together with balance-sheets showing the annual amount of profits of said copartnership, made out from the books of said copartnership, at Fort Union, New Mexico, were abstracted by parties unknown to your oratrix from her private apartments during the temporary absence of your oratrix; that owing to this circumstance, of all such correspondence there only remained in her possession one of said balance-sheets, showing the amount of the profits of said copartnership up to the fifteenth day of June in the year of our Lord one thousand eight hundred and sixty-three, taken from the books of said copartnership at Fort Union, New Mexico, a copy of which said balance-sheet is herewith filed and marked Ex. C, and prayed to be made a part of this bill, with leave to refer, etc.

Your oratrix would further state that from information received from her said deceased husband, and from other sources, she believes and so charges, that the amount of profits during the years 1864, 1865, and 1866 up to the time of the death of her said husband were fully equal to said sum of one hundred thousand dollars per annum.

Your oratrix further states and charges that during all of the time above specified and until the death of her said husband he was a full and equal partner in all of the business of said copartnership both in New Mexico and Texas, and as such entitled to one-third of the profits resulting from the same.

Your oratrix would further state and show unto your honor that after the death of her said husband, she, as such administratrix and heir-at-law of her deceased husband, applied to the said defendant William H. Moore (the said William C. Mitchell being then absent from the Territory) for a settlement of the affairs of said copartnership, so far as the interests of the estate of her deceased husband were concerned,

whereupon the said defendant, William H. Moore, by way of reply to your oratrix in this behalf, requested your oratrix, on behalf of said defendants, that your oratrix take no further steps looking to the prompt and speedy settlement of the estate of her said husband in said co-
23 partnership, and states that said defendants greatly desired that your oratrix would allow the interest and share of her said husband's estate in said business to be retained by said defendants for the use and benefit of said coparnership, promising that the same should remain as in the life-time of her said husband, undisturbed and undivided, and that your oratrix as the representative of the interest and share of her said husband, should not withdraw the same from the business of said copartnership until the first day of July, A. D. one thousand eight hundred and sixty-seven, at which time said defendants would be ready and willing to make full and complete settlement with the estate of her said husband.

And your oratrix here charges and states that the said defendant agreed to and with your oratrix, as administratrix of the estate of her deceased husband, that in case she would not withdraw the interest of
24 her said husband's estate from said copartnership, *that* the estate at the time of the settlement should be allowed an equal share to all of the profits that might accrue from the transacting and carrying on of said business as surviving partners, until the first day of July, A. D. 1867.

Your oratrix would further state and show unto your honor that said defendant William H. Moore especially requested of your oratrix not to take any further steps in the settlement of the estate of her said deceased husband, and particularly not to consult with or advise with any lawyer upon the subject of said settlement, promising that said defendants would protect and guard well the interests of said estate, and finally, at the expiration of said extended time, would settle the same upon the most just and equitable principles.

Your oratrix would further state and show unto your honor
25 that, having full faith and confidence in the fairness, good intentions, and integrity of the said defendants, and with a view to promote the interest of the estate of her said husband, she consented to said proposition, upon the conditions proposed by said defendant William H. Moore, on the part of said defendants.

And your oratrix further states and charges, from the time of the death of her said husband until the said first day of July, A. D. 1867, and until the filing of this bill, the whole estate and interest of her said deceased husband in said copartnership, except the sum of about four thousand dollars drawn out by your oratrix for her necessary expenses, has remained in said firm and copartnership, and formed a part of the capital stock thereof; and that she is informed and believes that since the death of her said husband, the business of said copartnership has been con-
26 ducted with the same success and advantage as at any previous period. Your oratrix would further state and show unto your honor that she had well hoped that said defendants in good faith would have complied with and carried out, in all respects, the agreement so made and entered into with your oratrix as aforesaid; but so it is, may it please your honor, and your oratrix charges the truth to be, that when she called (after the period, so agreed upon between her and said William H. Moore, for said settlement had elapsed, and, as administratrix and heir-at-law of her deceased husband, required of said defendants to comply with their said agreement, and to ascertain and pay over to your oratrix all of the interest of her deceased husband's estate in said

copartnership business,) the said defendant', William H. Moore and William C. Mitchell, combining and confederating together and with divers other persons, at present unknown to your oratrix, whose
27 names when discovered your oratrix prays she may be at liberty to insert herein, with apt words to charge them as parties thereto, with proper process, etc., and contriving her to wrong and injure your oratrix in the premises, absolutely and utterly refused to comply with her said reasonable request; at times pretending that her said deceased husband had little or no interest or property in said copartnership; at other times declaring that the interest of her said deceased husband in said copartnership ceased at the time of his death, and wholly ignoring the agreement made with your oratrix as aforesaid, to allow the estate and interest of her said husband remain and be by said defendants used and managed until the first day of July, A. D. 1867.

Your oratrix would further state that, as a final effort on her part to elicit some definite information and answer from said defendants,
28 and, if possible, secure a settlement and fully discharge her duties as such administratrix, she, on the 27th day of June, A. D. 1868, addressed a letter to said William H. Moore, urging and earnestly requesting him to give your oratrix some definite answer as to a settlement with her, and as to what was the interest and estate of her said husband in said copartnership, and further urging as a reason that near two years had elapsed since she had taken out letters of administration from the probate court of the county of El Paso in the State of Texas, and that she was unable to make the necessary return as such administratrix to said court; that although said letter was duly delivered to said William H. Moore a..d he was then requested to answer the same, yet he has refused so to do, up to the filing of this bill; a copy of which said letter is herewith filed and marked Ex. D. and prayed to be made a part of this bill, with leave to refer, etc.

29 Your oratrix would further state and show unto your honor that at the time of the death of her deceased husband, said copartnership had a large amount of goods, wares, and merchandise at Fort Union, New Mexico, being a complete and full assortment, the exact value of which your oratrix cannot now state, but believes the same would amount to the sum of one hundred thousand dollars as also other stocks of goods at Fort Bliss or Franklin, Texas, amounting in value, as she is informed and believes, to the sum of one hundred thousand dollars and upwards. At the same time there was owing to said defendants and her said husband, at Franklin and in El Paso County, Texas, forty-five thousand dollars, as she has been informed by said defendant William H. Moore; also the sum of twenty thousand dollars at Fort Union, New Mexico; that she believes and has been informed that there
30 was cash on hand at Fort Union, and at Franklin, Texas, belonging to said copartnership a large amount, the exact sum she cannot now state; and that there was deposited at the house of Robert Campbell & Co., in St. Louis, Missouri, and elsewhere in the States, about three hundred thousand dollars belonging to said copartnership; that she cannot now state whether the last-mentioned sum was deposited in the name of and to the credit of said defendant William H. Moore, or in the name of said firm of W. H. Moore & Co.; that, at said time, as your oratrix is informed and believes, said copartnership owed but a small amount, and that the various stocks of goods above mentioned were fully paid for.

Your oratrix would further state and show unto your honor that, since the death of her said husband, she has drawn from said co-

31 partnership not exceeding about four thousand dollars for the purposes aforesaid, and she fully believes and is informed that, at the time of the death of her said deceased husband, his interest in said copartnership was not less than one hundred and fifty thousand dollars in cash, and that said sum could have been realized for his said interest at once, and that said sum is now, together with the profits thereon made by said defendants, justly due in equity and good conscience *due* the estate of her said husband; all of which your oratrix believes the books of said copartnership, upon a fair investigation, will more fully show.

Your oratrix would further show unto your honor that owing to the refusal of said defendants, as aforesaid, to make any settlement with her, as administratrix, or to give her any satisfaction concerning the same, she is entirely unable and powerless to comply with her
32 duties as such or make the necessary returns to the probate court of the county of El Paso, aforesaid, or to make any inventory as required by the laws of said Territory, and by her oath, to be filed in the office of the probate court of the said county of Mora.

Your oratrix further charges and states that said defendants have ample means, belonging to said copartnership, to at once satisfy and pay over what is justly due the estate of her said husband; and that more than one year has elapsed since the said defendants have had all the time they desired in which to determine the amount of said estate and pay over the same to your oratrix.

And your oratrix here charges and states that the delay of said defendants in settling with your oratrix is for the purpose of defrauding your oratrix of her just rights and using the funds belonging to said estate in carrying on their own private business without any just
33 and fair compensation to the estate of her said deceased husband.

Your oratrix would further state and show unto your honor that she believes and is informed that said defendants, without consulting your oratrix, and without her consent, are removing the remaining goods at Franklin and Fort Bliss, Texas, to the Territory of Arizona, and that the funds belonging to said copartnership are being used by said defendants, and transferred by them out of the jurisdiction of this court; that said defendants have but a small stock of goods on hand at their store at Fort Union, New Mexico, and that, as your oratrix is informed and believes, they are using a large portion of the funds belonging to the estate of her said husband in taking contracts to supply the troops at Fort Union and other military posts in said Territory, as also in various mining enterprises and speculations.

34 Your oratrix further states that, in applying for letters of administration upon the estate of her deceased husband, she was required by said probate court of El Paso County, Texas, to make, and did make, an affidavit that she would make a perfect inventory of all the estate of said Nathan Webb, her said deceased husband, and that she is wholly unable to do so, because of the withholding by said defendants of all information upon the subject; that two years, the time limited for the settlement of estates of deceased persons in the State of Texas, has nearly expired since the date of her said letters of administration, and she greatly fears, unless she files a proper report in said probate court within the time prescribed, she will incur a forfeiture; and, for the same reason, she is unable to comply with the laws in relation to intestate estates in the Territory of New Mexico, and will incur a like forfeiture in said Territory.

Your oratrix further states that she is entirely without means
35 save the interest she has in the estate of her deceased husband, now in the hands of said defendants.

In tender consideration of the premises, and inasmuch as your oratrix is without adequate relief by the strict rules of the common law, she refers all these matters and things to your honor's court in chancery, where the same are cognizable and relievable, and prays:

First. That said defendants, William H. Moore and William C. Mitchell, may be made parties defendant to this her bill of complaint, with proper process to bring them into court, and that they be required upon their corporal oaths, and to the best of their respective ability, full, true, direct, and perfect answers make to all and singular the allegations and matters in this bill contained, as fully and perfectly as if they were each hereunto specially interrogated concerning the same.

36 2nd. Your oratrix prays that said defendants be compelled to turn over and deliver immediately to such person as your honor may select, all of the books, papers, evidences of indebtedness, letters, and letter-books belonging or in any wise appertaining to the copartnership existing between said defendants and her said husband in his life-time, from the year of our Lord one thousand eight hundred and fifty-seven, to the fifteenth day of October, A. D. one thousand eight hundred and sixty-six; as also a full statement of the amount of profits accrued to said defendants as surviving partners of said firm and copartnership from the time of the death of said Nathan Webb until the filing of this bill, and that said special commissioner or person so selected by your honor be required to report as early as practicable the
37 result of his examination and investigation of said books and other papers, and the amount shown by them to be due the estate of her said husband.

3rd. That said defendants may be strictly enjoined from removing any of the funds or property belonging to said copartnership out of the jurisdiction of this court, and from in any manner investing and using said funds, or any part thereof, for speculation or otherwise, or for their own use or benefit, or from disposing of the goods, wares, and merchandise, or other property of said copartnership without the consent of your oratrix, until the further order of this court.

4th. That said defendants be at once compelled by order of this honorable court to pay over to your oratrix a sufficient sum of money to enable her to carry on this suit, and for her support and maintenance, as the widow and heir-at-law of her said deceased husband,
38 during the pendency of the same.

5th. That said defendants be required to produce or place on file in this court the articles of agreement and copartnership, if any such exist, or in their power or under their control, made or entered into between said defendants and her said husband.

6th. That, upon the final hearing of said cause, your honor will be pleased to decree a full, final, and complete settlement between the said defendants and your oratrix, as administratrix and heir-at-law of her said husband, and will decree to your oratrix, as such administratrix and heir, the sum found to be due by said defendants to the estate of her said deceased husband; as also such interest and profits on the same, from the time of the death of her said husband until the final de-
39 termination of this suit, as to your honor may seem meet and just, and that your honor will grant unto your oratrix such other and further relief generally in the premises as to your honor may seem meet and just, and the nature of her cause require—

May it please your honor to grant unto your oratrix the writ of subpœna issuing out of and under the seal of this court, commanding said defendants to appear at the next regular term of the district court for the county of Mora, then and there to answer the premises, and abide the order or decree of said court in the premises.

S. B. ELKINS &
T. D. WHEATON,
Sol. for Comp.

Gertrude Elizabeth Webb, being duly sworn, upon her oath states that the matters and things set forth and contained in the fore-
40 going bill, those as stated of her own knowledge are true, and those stated upon the knowledge or information of others she believes to be true.

GERTRUDE ELIZABETH WEBB.

Sworn to and subscribed before me this 31st day of August, A. D. 1868.

JOHN S. WATTS,
Judge, &c.

In chancery. District court, county of Mora, at the March term, A. D. 1869.

GERTRUDE E. WEBB
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

Gertrude E. Webb, complainant in the foregoing bill, by way of supplement and in addition to the same, further states that, in the month of August last, when said bill of complaint was sworn to, the said defendant William H. Moore, learning that it was the intention of your oratrix to at once institute suit for a settlement of her said hus-
41 band's interest in the business of said firm of W. H. Moore & Co., and N. Webb & Co. prevailed upon your oratrix, on the ground that the books belonging to said firm were not duly posted, to desist from her intention of bringing said suit, promising and pledging himself to allow your oratrix to appoint some one as her agent to examine said books and th of said defend (original papers torn off) wish some one to jointly with the agent of your oratrix said books, and determine the interest of your oratrix.

Your oratrix states that she appointed a person skilled in bookkeeping to examine said books; but, owing to the fact that said books were not properly or correctly posted, her said agent, jointly with the party appointed by said defendants, could determine nothing, nor arrive at any conclusion. And, on the further promise of defend-
42 ants that said books should be duly posted by the 25th day of December last, and on that day, or about that time, a settlement should be had with your oratrix as administratrix, your oratrix took no steps looking to a settlement in the courts.

Your oratrix further states that she has most patiently waited since said 25th day of December for said defendants to comply with their promise, and settle with your oratrix; but, up to the time of filing this bill herein, they have not offered any settlement with your oratrix, or any reason for failing to comply with their last promise.

Submitting the above supplement for the consideration of the court, and as a part of her said bill, your oratrix prays, as she has heretofore prayed in her said bill.

S. B. ELKINS,
For Comp.

G. E. Webb, complainant in the foregoing bill, being duly
43 sworn, upon her oath states that the matters and things set forth in the foregoing supplement are true, to the best of her knowledge and belief.

GERTRUDE E. WEBB.

Sworn to and subscribed before me this the 15th (original paper torn off) 1869.

On which bill is the following endorsement, to wit:

Gertrude E. Webb vs. William H. Moore et al. Chancery. Bill. Filed in my office this 22nd day of Jan'y, 1869. Sam'l Ellison, clerk. S. B. Elkins & T. D. Wheaton.

EXHIBIT A.

THE STATE OF TEXAS,
County of El Paso:

Whereas it has come to my knowledge that Nathan Webb, late
44 of the county of El Paso, and State of Texas, died at Fort Bliss on the fifteenth day of October, A. D. 1866, intestate; and whereas Gertrude E. Webb, wife surviving of the said Nathan Webb, deceased, did, on the fourteenth day of December, A. D. 1866, make application to me for letters of administration on the estate of the said deceased, as such wife surviving, and on the seventeenth day of December did file her bond and affidavit, as required by law: Now, therefore, know ye, all whom it may concern, that I, Albert H. French, probate judge of and for the county of El Paso, and State of Texas, have, and do by these presents appoint and constitute Gertrude E. Webb as legal administratrix of said estate of Nathan Webb, deceased, with full power as such, in conformity to law.

ALBERT H. FRENCH,
Probate Judge.

Witness my hand and the seal of the county court, at office,
45 the seventeenth day of December, A. D. 1866.
[SEAL.]

J. M. LUJAU,
Clerk County Court E. P. C.

[Stamps, $25.]

On which said paper is the following endorsement, to wit:

Ex. A. Letters of administration of Nathan Webb. Filed in my office this 22nd day of Jan'y, 1869. Sam'l Ellison, clerk.

EXHIBIT B.

TERRITORY OF NEW MEXICO,
County of Mora:

Whereas it has come to my knowledge that Nathan Webb, late of the

county of El Paso, and State of Texas, died at Fort Bliss, on the 15th day of October, A. D. 1866, intestate; and whereas Gertrude E. Webb, wife surviving of said Nathan Webb, deceased, did, on the 27th day of July, 1868, make application to me for letters of administration
46 on the estate of said deceased, as such wife surviving, and on the twenty-seventh day of said month of July did file her bond and affidavit as required by law:

Now, therefore, know ye, all whom it may concern, that I, Vicente Romero, probate judge of and for the county of Mora, and Territory aforesaid, have, and do by these presents appoint and constitute Gertrude E. Webb legal administratrix of the said estate of Nathan Webb, deceased, with full powers as such according to law.

VICENTE ROMERO,
Probate Judge.

Witness my hand and the county seal of office this twenty-seventh day of July, 1868.

[SEAL.] PABLO VALDEZ,
Escribano.

On which said paper is the following endorsement, to wit:

Ex. B. Letters of administration estate of N. Webb, Mora Coun-
47 ty, N. M. Filed in my office this 22nd day of Jan'y, 1869. Sam'l Ellison, clerk.

EXHIBIT C.—*Statement.*

You have gained, as shown by the credit side of profit and loss' $113,617.66.

ASSETS.

M'd'se on hand, including store-house	$30, 703 58
Accounts due on co. books, petty ledger, &c.	21, 063 12
Cash on hand	7, 647 21
Amount due on firm books	177, 011 77
	$236, 425 68
The liabilities of the firm are	122, 808 02
	$113, 617 66

Your net capital, as shown by the credit side of stock, is $191,513.09. This amount includes $16,044.47, the bal's when you closed the books for the old firm.

The net capital of the present firm of W. H. Moore & Co. is $175,468.52.

Fort Union, N. M., June 15th, 1863.

H. V. HARRIS,
Book-keeper.

48 On which said paper is the following endorsement, to wit:

Exhibit C. Copy statement of W. H. Moore & Co. Net gains & net capital to June 15th, 1863. Filed in my office this 22nd day of Jan'y, 1869. Sam'l Ellison, clerk.

EXHIBIT D.

SANTA FÉ, N. M., *June* 27, 1868.

W. H. MOORE, Esq.,
Fort Union, N. M.

D'R SIR: The time is now at hand when, as administratrix, I must make final settlement of the estate of my late husband, Mr. Nathan Webb. When this is done, it is my wish and intention to invest the principal portion of the means at my disposal either in public securities or productive real estate, so that in my expenditures I may not trench upon my capital. In order that I may make settlement as above,
49 and that I may know approximately the present value of the estate, I have to request that you will give me, at as early a day as practicable, a statement from the books of the firm of W. H. Moore & Co. of the amount and value of the assets of the firm at this time.

If convenient, I would prefer that the statements above requested should give the yearly balances beginning with the first year of the existence of the firm. I have also to request that you will furnish me with a copy of the articles of copartnership between the members of the firm of W. H. Moore & Co., in which my husband was a partner. You will notice that the information above requested is no more than I am entitled to as administratrix of the estate, and heir-at-law of my late husband, and it is absolutely necessary to have it in order to make my report to the probate court from whence I have my letters of
50 administration, and I trust it will be convenient, and your pleasure to furnish them without delay. Before returning to Franklin, I expect to spend some time at Santa Fé with my sister.

Very respectfully, your ob't serv't,

GERTRUDE E. WEBB.

On which said paper is the following endorsement, to wit:

D. Letter to W. H. Moore. Filed in my office this 22nd day of Jan'y, 1869. Sam'l Ellison, clerk.

And be it further remembered that, on the 22nd day of January, A. D 1869, the following answer of William H. Moore was filed in the clerk's office of the said district court; which said answer is in the words and figures following, to wit:

In chancery. In the district for the county of Mora.

GERTRUDE E. WEBB
vs.
W'M H. MOORE & W'M C. MITCHELL.

51 The answer of defendant W'm H. Moore to the bill of complaint filed herein.

This defendant, saving and reserving unto himself all benefit of exception to the many errors, uncertainties, and imperfections in the said complainant's bill contained, for answer thereunto, or unto so much thereof as he is advised it is material for him to answer unto, answering, says: That he admits that the said complainant is administratrix of the estate of Nathan Webb, deceased, and that the complainant and this respondent reside at the places in said bill contained, and that the said Nathan Webb, now deceased, and this respondent, jointly with W'm

C. Mitchell, were formerly partners in a mercantile firm, doing business under the firm-name and style of W. H. Moore & Co., and that this respondent and the said W'm C. Mitchell are the surviving partners of said firm.

52 This respondent further admits that the said complainant intermarried with the said Nathan Webb at the time and in the manner in said bill contained, and that she resided with her said husband at Fort Union until the time mentioned in the said bill, when they removed to El Paso County, Texas, where they resided up to the time of the death of the said Nathan Webb, who departed this life at the time stated in said bill. and who died intestate.

This respondent further admits that there are no children living, the fruits of said marriage. He further admits that the said complainant took out ancillary letters of administration on said estate, in the county of Mora as is in said bill stated, and that, by the laws of the State of Texas, she is sole heir of the personal estate of her said husband, he having died intestate and without issue. This respondent denies that

53 he entered into and formed a copartnership with the said Nathan Webb in the year one thousand eight hundred and fifty-nine, for the purpose of carrying on and transacting the business of post-sutlers at Fort Union, or as general dealers in merchandise, and positively denies that the said Nathan Webb ever was a copartner with this respondent and the said W'm C. Mitchell as contractors to furnish the troops stationed at the various military posts in this Territory, but states the fact to be that, on or about the 15th day of May, A. D. 1861, this respondent and the said W'm C. Mitchell did enter into a copartnership with the said Nathan Webb as post-sutlers and merchants in the mercantile business then being by them done at Fort Union, New Mexico—he, the said Nathan Webb, to be entitled to one-eighth interest in the profits of said business. He further denies that the said Nathan Webb at the time stated in said bill, or at any other t me, furnished and

54 paid into said copartnership business the sum of fifteen thousand dollars or any other sum whatever in cash or property as is in said bill stated. This respondent admits that the said Nathan Webb did take charge of the books, and act as cashier of said business, in which capacity he had been previously acting, but he denies that, in consideration thereof, it was agreed between said partners that the said Nathan Webb should be equally interested with this respondent and the said W'm C. Mitchell, and share equally alike in all the profits resulting from the said copartnership business. but states that the consideration of his services was to be one-eighth interest of the profits of said business as is above stated.

This respondent denies that the terms, conditions, and undertakings of said copartnership were ever reduced to writing.

This respondent admits that the said Nathan Webb and himself did continue to carry on and transact the business of said copartnership, as merchants at Fort Union, New Mexico, from the time of the

55 commencement of the same, until some time in the year A. D. 1863, with fair success and comparatively few losses, but this respondent cannot state the exact amount of annual profits that accrued to said business as the balance-sheets for that time have not as yet been struck.

This respondent denies that, early in the year 1863, it was agreed by and between the said Nathan Webb and this respondent, and the said W'm C. Mitchell to extend the business of said copartnership to Southern New Mexico and El Paso County, Texas, upon the same terms and

conditions as is in said bill stated, but states the fact to be that, in the year A. D. 1863, it was agreed by and between the said Nathan Webb, this respondent, and the said W'm C. Mitchell to commence a mercantile business at Franklin, El Paso County, Texas, under the firm-name and style of N. Webb & Co., and that he, the said Nathan Webb, was to take charge of, control, and direct said business in Franklin,
56 Texas, and that, in said business so done in Franklin, Texas, and Southern New Mexico *that* said Nathan Webb and this respondent and the said W'm C. Mitchell should be equally interested, but that the interest of the said Nathan Webb in the mercantile business at Fort Union, was to be one-eighth of the profits of said business.

This respondent admits that it was agreed by and between the said Nathan Webb and this respondent and the said W'm C. Mitchell that the said W'm H. Moore should remain at Fort Union, New Mexico, and that said W'm C. Mitchell should remain in the States for the purpose of purchasing and shipping goods to New Mexico, in behalf of and in the interest of said copartnership.

This respondent admits that the business of merchants in Southern New Mexico and El Paso County, Texas, was established at the places
57 and times in said bill stated, but further states that the goods for said business were furnished by, with the credit, and paid for by, this defendant and the said W'm C. Mitchell.

This defendant admits that the business was done at Franklin, Texas, as is in said bill stated, and that at times the said Nathan Webb, jointly with other persons, did obtain contracts to furnish supplies to the United States, upon which contracts money was made, but what amount this respondent cannot state; that the Government contracts in which the said Nathan Webb was interested was the only business transacted by him in Southern New Mexico or Franklin, Texas, from which any profits were derived.

This respondent admits that in addition to the store established at Franklin, Texas, the said Nathan Webb and this respondent and the said W'm C. Mitchell became post-sutlers at Fort Bliss, Texas, and that the business both at Franklin and Fort Bliss was supervised
58 and directed by the said Nathan Webb until the time of his death, but he denies that the said business at the above-named places was successful, or that any profits were derived from the same.

This respondent denies that, from the time said Nathan Webb commenced business as a partner in Mesilla and Franklin, as aforesaid, up to the time of his decease, *that* there was made and gained as clear profits upon their entire business above one hundred thousand dollars per annum, and this respondent further denies that the said W'm H. Moore on several occasions and in various letters to her deceased husband declared that said copartnership had acquired during the war of the rebellion several hundred thousand dollars, and often receiving at their said store at Fort Union more than two thousand dollars per day.

This respondent further denies that balance-sheets showing the
59 amount of profits of said copartnership, made out from the books at Fort Union, were abstracted from the said complainant, because they state the fact to be that only one balance-sheet of this respondent and the said W'm C. Mitchell and the said Nathan Webb, was ever made out, which said balance sheet is the one filed with said complainant's bill and marked Exhibit C.

This respondent further denies that the amount of profits during the years 1864, 1865, and 1866, were equal to the sum of one hundred thousand dollars per annum.

This respondent again positively denies that during all the time specified in said bill *that* the said Nathan Webb was a full and equal partner in all of the business of the said copartnership, and as such entitled to one-third of the profits resulting from the same.

This respondent admits that, after the death of the said Nathan
60 Webb, the said complainant, as administratrix and heir-at-law of her deceased husband, did apply to the said defendant W'm H. Moore for a settlement of the affairs of said copartnership, so far as the estate of her deceased husband was concerned, but denies that he, the said W'm H. Moore, requested the said complainant to take no further steps looking to the prompt and speedy settlement of the estate of her said husband in said copartnership, or that the said defendant desired that the said complainant would allow the interest and share of her said husband's estate in said business to be retained by this respondent and the said W'm C. Mitchell for the use and benefit of said copartnership, or that this respondent promised that the interest of the said Nathan Webb should remain, as in his life-time, undisturbed and undivided, or that the said complainant should not withdraw the share and in-
61 terest of her said husband from the business of said copartnership until the time stated in said bill, but states the fact to be that, whenever the complainant applied for a settlement of the interest of her deceased husband in said copartnership business, this respondent replied and endeavored to show that it was impossible to settle up the interest of her deceased husband in said copartnership business, for the reason that there was a large amount of goods on hand at the business in Southern New Mexico, and El Paso County, Texas, which had to be disposed of, besides there were outstanding debts to be collected, or settled in some way, and further that the books of the said copartnership business had not been posted in such manner as to ascertain the interest of the said Nathan Webb in the said business.

This respondent further denies that either of them agreed to and with the said complainant, as administratrix of the estate of her de-
62 ceased husband, that, in case she would not withdraw the interest of her said husband's estate from said co-partnership, *that* the estate at the time of the settlement should be allowed an equal share in all of the profits that might accrue from the transacting and carrying on of said business as surviving partners until the first day of July A. D. 1867.

This respondent further denies that said defendant W'm H. Moore especially requested of the said complainant not to take any further steps in the settlement of the estate of her said deceased husband, but admits that he may upon some occasion have said to complainant that it was not necessary for her to consult with or advise with any lawyer upon the subject of said settlement, and further admits that he did promise that said respondent would protect and guard well the interest of said estate, and settle the same upon the most just and equitable principles, which was and is their intention to do.

63 This respondent admits that the interest of the said Nathan Webb, from the time of his death up to the present time, has remained unsettled for the reasons above set fourth in this their answer, except what has been drawn out by the said complainant.

This respondent denies that the business of said copartnership has been conducted with the same success and advantage as at any period previous to the death of said Nathan Webb.

This respondent positively denies all combination and confederation

together or with any other persons to wrong and injure the said complainant in the premises.

This respondent admits that the said complainant did address a letter at the time stated in said , urging and requesting W'm H. Moore the defendant, to give to the said complainant some definite answer as to a settlement with her, and as to what was the interest and es-
64 tate of her said husband in said copartnership, and this defendant admits that he did not answer said letter, but states as a reason why he did not, that he had frequently explained to said complainant why the settlement referred to could not be made.

This defendant denies that there was the amount of goods, wares, and merchandise at Fort Union, New Mexico, or that the value of the same was one hundred thousand dollars, as is in said bill stated, but states the fact to be that there was only at said time between sixty and seventy thousand dollars' worth of goods there on hand, to the best information and belief of this defendant.

This defendant admits that there was also at said time other stocks of goods at Fort Bliss and Franklin, Texas, but denies that the same amounted in value to the sum of one hundred thousand dollars and upwards, as is in said bill stated, but states the fact to be that the same did not, as this defendant is informed and believes, exceed
65 in value seventy thousand dollars.

This defendant admits that there was owing to the said copartnership business at Franklin and El Paso County, Texas, some amount of money, but what amount this defendant cannot state, as the books belonging to said business are in the hands of the agent of this defendant and W'm C. Mitchell, surviving partnerers of the said firm at El Paso County, Texas, but this defendant has been informed by said agent, and believes, that very little, if any, of said amount so owing can ever be collected. He also admits that there was, at said time, to the business at Fort Union due the amount in said bill stated, a portion of which has been and may be collected.

This defendant denies that there was cash on hand at Fort Union or Franklin, Texas, belonging to said copartnership a large amount, as is in said bill stated, but states the fact to be that if there was any amount of money on hand at Franklin, Texas, or Fort Bliss, at the time of the decease of the said Nathan Webb, the same was taken
66 and disposed of by the said complainant and her agents, and never came into the possession of this defendant and the said W'm C. Mitchell.

This defendant further denies that there was deposited with the house of Robert Campbell & Co., of Saint Louis, or elsewhere, in the States, the sum of three hundred thousand dollars, or any other sum, except a sufficiency to enable this defendant and the said W'm C. Mitchell to carry on successfully their business as merchants, either in the name of W'm H. Moore or of W'm H. Moore & Co.

This defendant further denies that, at said time, the said copartnership owed but a small amount, or that the various stocks of goods above mentioned were fully paid for, as is in said bill stated. This respondent denies that the said complainant has only drawn from said copartnership business about the sum of four thousand dollars, as is in said bill stated, as the books of said copartnership business will show.

He further denies that, up to the time of the death of the husband
67 of the said complainant, his interest in said copartnership was not less than one hundred and fifty thousand dollars in cash, but states the fact to be that his interest was a much less sum when this

defendant and the said W'm C. Mitchell, as surviving partners, shall have closed up the business of said copartnership, and the amount due said Nathan Webb shall be properly ascertained.

This defendants admits that he and the said W'm C. Mitchell have ample means belonging to said copartnership to at once satisfy and pay over what is justly due the estate of her said husband, and this defendant admits that, although some time has elapsed since the decease of the husband of the said complainant, yet this defendant and the said W'm C. Mitchell have been entirely unable to close up the copartnership business in which the said Nathan Webb was interested, for the reason that a considerable portion of the stock of goods then on hand at Franklin and Fort Bliss are yet undisposed of, and for the further
68 reason that the books of said copartnership have not been properly posted so that balance-sheets can be struck.

This defendant denies that the delay of him and the said W'm C. Mitchell in settling with the said complainant is for the purposes of defrauding the said complainant of her just rights or of using the funds belonging to said estate in carrying on their own private business.

This defendant admits that, without consulting the said complainant, he and the said W'm C. Mitchell, as surviving partners, have been removing the remaining goods at Franklin and Fort Bliss, Texas, to the Territory of Arazona, as the defendant believes he had a right to do, and here states as a reason why the said goods were so removed, that he was informed by Henry Cuniffe, the agent of the defendant and W'm C. Mitchell, as surviving partners, that said goods could not be sold in that region of country at any price, and this defendant had been informed and believed that said goods could be sold and disposed
69 of at Arazona where the same are now being sold and disposed of.

This defendant positively denies that the funds belonging to the said Nathan Webb are being used by said defendants or transferred by them out of the jurisdiction of this court, except such as may be necessary to enable this defendant and the said W'm C. Mitchell, as surviving partners, to close up said business.

This defendant further denies that there is a small stock of goods on hand at the store at Fort Union, or that the said defendants are using any portion of the funds belonging to the estate of the said Nathan Webb in taking contracts to supply the troops at Fort Union or other military posts in the Territory, or in various mining enterprises and speculations.

This defendant cannot state what means the said complainant has, but here states that he has always and on all occasions supplied her with such funds as she has applied for.

This defendant, having now answered the original bill filed herein, by way of answer to the supplement -bill, says that some time during
70 the month of August or September, upon application made to him by the said complainant to appoint some one to examine the books of the firms of W'm H. Moore & Co. and N. Webb & Co. jointly with a skillful book-keeper that he then had employed in posting up the books of said firms, which said book-keeper so employed by the defendant is still engaged in posting up said books. This defendant denies that he promised said complainant that said books should be duly posted by the 25th day of December last, or that he would, on that day, make a settlement of the interest of her said husband in said business.

This respondent, by way of explanation, states that, at the time of the decease of the said Nathan Webb, the firm of N. Webb & Co. at

Franklin and Fort Bliss in El Paso, Texas, was indebted to the firm of W. H. Moore & Co. in about the sum of forty thousand dollars. He further states that, previous to the death of the said Nathan Webb, he drew out of the concern for his own private purposes about the
71 sum of fifteen thousand dollars, and that, after his decease, the said complainant and her agents drew out of the concern for the purposes of paying the private debts of the said Nathan Webb, and for her own use, about the sum of fifteen thousand dollars more, making in all about the sum of thirty thousand dollars drawn out of the concern for their own private purposes.

And now having fully answered the original and supplemental bill filed herein, prays to be hence dismissed, with his reasonable costs, in this behalf most wrongfully sustained.

M. ASHURST,
Sol. for Defendant.

W'm H. Moore, defendant to the foregoing answer, being duly sworn, says that the matters and things therein stated as being stated of his own knowledge are true, and those stated from information of others he believes them to be true.

W'M H. MOORE.

Sworn to and subscribed before me this 22nd day of January, A. D. 1869.
SAM'L ELLISON,
Com'r in Chancery.

72 On which said answer is the following endorsement, to wit:

Gertrude E. Webb vs. W'm H. Moore, W'm C. Mitchell. Filed in my office this 22nd day of Jan'y, 1869. Sam'l Ellison, clerk.

And be it further remembered that, on the 22nd day of January, A. D. 1869, in the clerk's office of the first judicial district of the Territory of New Mexico, the following exceptions to defendant's answer in the foregoing cause were filed; which said exceptions are in the words and figures following, to wit:

In chancery. District court, county of Mora.

GERTRUDE E. WEBB, ADM'X,
vs.
W. H. MOORE ET AL.

Exceptions taken by the said complainant to the joint answer of the said defendant W'm H. Moore to her bill of complaint in this cause.

73 1st. For that the said defendant William H. Moore has utterly failed and refused to answer an allegation in complainant's bill, found on page 5 of said bill, commencing with the words "It was further agreed," and ending with words "member and partner."

2nd. For that said defendant hath not, according to the best of his knowledge, information, and belief, set fourth and answered whether the husband of your oratrix and said defendants continued to carry on and transact the business of said copartnership, etc., as alleged on page six of said bill, commencing with the words "Your oratrix would further state that said defendants," and ending with words "will prob-

bably show." And also for that the said defendant, in answer to the same allegation, has not, according to the best of his information, knowledge, and belief, set fourth and answered what the annual profits were that accrued to said firm from the time of the commencement of said copartnership until the year A. D. 1863.

3rd. For that the said defendant has not, according to the best
74 of his knowledge, information, and belief, set fourth, discovered, and answered whether said copartnership was successful in all of their business transactions, both at Fort Bliss, Franklin, Fort Union, and elsewhere; and has also failed to answer and set fourth the amount of annual profits gained upon their entire business transactions from the time complainant's husband commenced business as a partner in Mesilla. (See comp. bill, page 9, commencing at the 12th line from the bottom of said page with the words "during all which time," and ending on page 10th of said bill with the words "one hundred thousand dollars per annum.")

4th. For that said defendant has not, according to the best of his knowledge, information, and belief, set fourth, discovered, and answered what amount said copartnership had acquired during the war of the rebellion, or the amount received by said copartnership at their said store in Fort Union; and further said defendant does not set
75 fourth and answer what he did write to said deceased partner with regard to the amount acquired during the rebellion, and the daily receipts at Fort Union. (See page 10 of bill, commencing on the third line from the top of said page with words "and that the said, and ending with the words "two thousand dollars per day.")

5th. For that said defendant has not, according to the best of his knowledge, information, and belief, set fourth, discovered, and answered, whether "a large portion of the correspondence, and particularly all the letters of said respondents to said Nathan Webb relating to the amount of profits declared by said copartnership for the years A. D. 1863 to 1866, and relative to the interests of said deceased partner, were abstracted," as in said bill stated. (See page 10 and 11 of said bill.)

6th. For that said defendant has not, to the best of his knowledge, information, and belief, set fourth, discovered, and answered what the amount of profits were that accrued from said copartnership business during the years 1864, 1865, & 1866, and until the death of the husband of said complainant. (See page 11 of said bill, commencing.
76 line 11 from the bottom of said page, with words "your oratrix," and ending with words "dollars per annum.")

7th. For that the said defendant has not, according to the best of his knowledge, information, and belief, set fourth and discovered in his said answer whether the interest of said deceased partner has remained in said copartnership and formed a part of the capital stock thereof since his death. (See page 15th of said bill, line 15, 16, & 17.)

8th. For that said defendant has not, to the best of his knowledge, information, and belief, set fourth, discovered, and answered whether or not he, the said respondent, informed complainant that there was forty-five thousand dollars due said defendants and her said husband in El Paso County, Texas, at the time of the death of her said husband; and that said defendant, further, has not described and set fourth in his said answer the amount of cash on hand at said Fort Union at the time of the death of the husband of the complainant. (See page 19 of said bill.)

77 9th. For that said defendant has not, to the best of his knowl-

edge, information, and belief, set fourth and discovered the amount of money deposited in the States to the credit of said copartnership at the time of the death of said Nathan Webb, or at what place said sum was deposited. (See page 19 of said bill.)

10th. For that said defendant has not, to the best of his knowledge, information, and belief, set fourth and discovered in his said answer whether the interest of her said husband, at the time of his death, in said copartnership was worth the sum of one hundred and fifty thousand dollars, or what the amount or extent of said interest was at said time, and what could have been realized in cash from same. (See page 20 of said bill.)

11th. For that said defendant has not, in his said answer, answered the allegation on page 21 of said bill, commencing with words "your oratrix," at top of the said page, and ending with words "county of Mora."

78 12th. For that said defendant has not, to the best of his knowledge, information, and belief, set fourth, discovered, and answered whether said defendants have not had all the time they desire in which to settle or determine the amount due her said husband's estate by said copartnership, or whether said defendants are not using the interest of the estate of her said husband without any fair or just compensation to said estate. (See pages 21 & 22 of said bill.)

That said answer is imperfect, insufficient, and evasive, in the following places:

1st. On page 3, commencing at the fourth line from the bottom of said page and continuing to the bottom

2nd. On page 5 of said answer, commencing at the eighth line from the bottom of said page and continuing to the 3 line from the bottom, and ending with words "dollars per annum," and commencing with line 3rd of said page with words "Respondent further denies," and continuing five lines on page 6.

79 3rd. And on page 6, commencing line 12 with words "this respondent," and continuing four lines.

4th. On page 10 of said answer, the fourth line from the bottom, commencing with word "this," and continuing on page 11 to 8th line from the bottom of said page, ending with words "shall be properly ascertained."

5th. On page 13, commencing at top of page and ending with words "funds as she has applied for."

In all of which particulars the complainant is advised that the answer is altogether imperfect, evasive, and insufficient; therefore complainant prays said def't W'm H. Moore be compelled to answer anew, and put in a full and sufficient answer.

S. B. ELKINS.
Sol. Comp.

On which said paper is the following endorsement, to wit:

Gertrude E. Webb vs. W. H. Moore et al. Chancery. Exceptions to def't's answer. Filed in my office this 22nd day of January, 1869. Sam'l Ellison, clerk.

80 *Order of court for new answer.*

The defendants are required to answer over, on or before the first day of the term of the court at Mora, upon the following points:

1st. What was the capital stock of the firm of W. H. Moore & Co.,

at the date of the partnership with Webb, and what amount of goods, wares, and merchandise, did consist in money or lands, and by whome was said capital furnished.

2nd. What amount of capital belonged to the firm of N. Webb & Co., at the death of Webb, and in what did it consist; what amount of personal property and real estate, if any, and what amount of money; what debts were unpaid, and what debts were due the firm, as shown by the books of said firm at the death of Webb.

3rd. What amount of debts have been paid; what property sold and debts collected, since the death of Webb, belonging to or owned by said firm of W. H. Moore & Co.

81 4th. What amount of property, real or personal, belonging to said firm, and debts to be paid and debts to be collected, remain yet unsettled.

5th. What was the capital stock of the firm of N. Webb & Co. when it commenced business, and of what did it consist.

6th. What was the amount of stock on hand at the death of Webb belonging to the firm of N. Webb & Co., and of what did it consist.

7th. What amount was drawn out of the said firm by N. Webb prior to his death, and whether the same was goods, money, or other property.

8th. What amount of property belonging to the firm of N. Webb & Co. remains unsold, and of what does it consist; what amount of debts due by the firm are unpaid, and what amount due to the firm are unpaid, and whether solvent or insolvent claims.

9th. As the books of both firms are in the possession of the defendants, and ought to show all the facts when required, if the information is not so furnished by the first day of the next term of the court

82 in Mora, the court will direct the clerk of the court to take possession of or examine the books, and report in writing to the court upon the points above mentioned.

10th. The complainant in this case not showing that the amount received by her of defendants has been in ; and not showing that she is unable to proceed with her case for the want of means to employ counsel, and not showing that at any time the defendants have refused to advance such amount as was required for her support and the proper care of her business, the application to pay over more is refused.

11th. The facts set fourth in the bill and answer do not show that any necessity rests for an injunction or the appointment of a receiver, and no order is made upon those points.

The court does not think it has any power over the settlement of a solvent partnership unless insolvency, fraud, or waste is charged upon the surviving members of the firm.

In the management of the business, and if it appears that unreasonable delay and neglect to settle arrises, then the chancellor will take the proper steps to cause a settlement to be made.

83 And afterwards, to wit, on the 22nd day of February, A. D. 1869, the following writ of summons was issued; which said writ is in the words and figures following, to wit:

The Territory of New Mexico to Henry V. Harris, greeting:

You, and each of you, are hereby commanded to appear before the district court for the first judicial district of said Territory, on the first day of the next term thereof, to be held within and for the county of

Mora, at the court-house of said county, then and there to testify in a certain cause in said court pending, wherein Gertrude E. Webb is plaintiff and W'm H. Moore et al. is defendant, on the part of the plaintiff; and this do you under penalty of the law.

Witness the Hon. John S. Watts, chief justice of the supreme court of said Territory and judge of the first judicial district court, and the seal of said court this 22nd day of February, 1869.

[SEAL.] SAM'L ELLISON, *Clerk.*

84 On which said writ of summons is the following endorsement, to wit:

And be it further remembered that, on the 24th day of March, A. D. 1869, being the third day of the March, A. D. 1869, term of the U. S. district court for the first judicial district of the Territory of New Mexico, held within and for the county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
W'M H. MOORE AND OTHERS. } In chancery.

85 The defendants now file their amended answer herein; which said answer is in the words and figures following, to wit:

In the district court for the county of Mora. March term, A. D. 1869

GERTRUDE E. WEBB
vs.
W. H. MOORE, W. C. MITCHELL.

Amended answer by W'm H. Moore.

This defendant, by way of amendment to his original answer, answering, says:

That the capital stock of the firm of W'm H. Moore & Co., at the date of the partnership with N. Webb, was forty-six thousand three hundred eighty-two $\frac{30}{100}$ dollars, consisting of debts and merchandise then on hand; and the said firm, at said date, was owing thirty thousand three hundred and thirty-seven $\frac{53}{100}$ dollars, leaving a balance of sixteen thousand forty-four dollars and forty-seven cents.

This defendant further states that at the time of the death of said N. Webb it is impossible for him to state the exact amount of capital that belonged to the firm of N. Webb & Co.; but states that the capital belonging to said firm consisted of debts due them, a lot of merchandise on hand, & a tract of land known as the Brazito purchase. There was cash on hand about sixty-five hundred dollars, as appears
86 from the books.

Exhibit A, herewith filed & made a part of this answer, shows the amount of debts unpaid owing by said firm of N. Webb & Co., as also the debts due said firm, as shown by the books of N. Webb & Co.

This defendant further states that he has been informed and believes that a large portion of the debts due said firm are worthless and insolvent, and that little can be expected to be collected from the same.

This defendant, further answering, says that Exhibit B, herewith filed and made a part of this answer, shows what amount of debts have been paid; what property sold and debts collected since the death of Webb, with this exception: That in July, previous to the death of said N. Webb, C. W. Adams became a partner in the business then being transacted at Fort Union, N. M., and a large amount of the debts which appear to have been collected by Exhibit B were only transferred from the books of W. H. Moore & Co. to the book of W. H. Moore, Adams & Co., and many of said debts remain yet uncollected.

This defendant, further answering, says that the amount of property, real and personal, belonging to said firm consists of a flouring-
87 mill situated on the Mora River, and a mule-train consisting of thirty-four wagons and about two hundred and eighty mules, and Exhibit C shows the amount due said firm yet to be collected and remaining unsettled, and debts also due by said firm.

This defendant, further answering, says, that the capital stock of the firm of N. Webb & Co. when it commenced business was forty-three thousand ninety-two $\frac{94}{100}$ dollars, and consisted of goods, wares, and merchandise purchased and paid for by W. H. Moore & Co.

This respondent, further answering, states that the amount of stock on hand at the time of the death of said N. Webb, belonging to the firm of N. Webb & Co., amounted to seventy-eight thousand nine hundred and seventy-nine $\frac{16}{100}$ dollars, consisting of a stock of goods then on hand, from which about the sum of twenty thousand dollars has been received by the firm of W. H. Moore & Co., and about five thousand dollars more this respondent expects to realize from a remnant of goods belonging to the said firm of N. Webb & Co., now in the hands of their agent at Tuczon, Arazona, being sold.

This respondent, further answering, says that there was drawn out by N. Webb prior to his death, from the firm of N. Webb & Co.,
88 twenty-three thousand dollars, a large amount of which was in cash, as shown by the books of said firm.

This respondent, further answering, states that there is no property belonging to the firm of N. Webb & Co. remaining unsold, except machinery for a steam-mill, the Brazito tract of land above mentioned, and the small lot of goods in the hands of the agent at Tuczon, Arazona, for sale. There are no debts of any consequence known to this respondent, with the exception of about sixty thousand dollars due by said firm of N. Webb & Co. & W. H. Moore & Co., and Exhibit A shows the amount of debts due the said firm, most of which are insolvent, as by reference to said list will appear.

This respondent, further answering, states that he has been informed and believes, that the mother of the said N. Webb is still living, as will appear by reference to a letter herewith filed and marked Exhibit I, and is consequently interested in said estate of N. Webb, and a necessary party to this suit. And now having fully answered, prays as in his original answer, &c., &c.

W'm H. Moore, being duly sworn, states that the matters and
89 things stated and set fourth in this his amended answer, as being stated of his own knowledge, are true; and those as stated from th' information of others he believes to be true.

W. H. MOORE.

Sworn to and subscribed before me this 24th day of March, 1869.

SAM'L ELLISON, *Clerk.*

On which said answer is the following endorsement, to wit: Gertrude E. Webb vs. Moore & Mitchell. Amended answer. Filed in my office this 24th day of March, 1869. Sam'l Ellison, clerk.

EXHIBIT A.

6.	Louis Candeos	29 45		
9.	Joab Houghton	3,208 45		
10.	Mrs. J. M. Edgar	1,000		
16.	Frank Fletcher	3 35		
18.	Lieut. W. B. Smith	18 00		
22.	Juan Muños	15 50		
23.	S. H. Potter	39 13		
25.	Captain Erastus Hood	42 00		
	32. Dan'l Green	150 00		
90	37. John J. Hill	428 26		
	39. V. Kaufman	165 25		
46.	John May	27 15		
52.	St. Whitmore	1 50		
"	. John McGraw	30 00		
55.	Constante	205 28		
56.	Cha's A. Hoppin	64 50		
"	. Emilio Markt	1 25		
60.	Captain E. D. Sherland	5 00		
"	. W'm Jones	14 00		
66.	Lieut. W'm Brady	2 87		
69.	Capt. Emil Fritz	764 75		
"	. James Patterson	372 00		
72.	E. Brevort	200 00		
75.	Fort West Store	326 28		
86.	Mess account	291 98		
93.	W. B. Stapp		252	00
97.	Alex. Duvall	1,588 20		
102.	Lully & Ochoa	389 24		
118.	Lieut. S. H. Allynn	117 88		
131.	Profit and loss		1,454	38
143.	J. N. Hinckley		94	25
	Amount forward	9,441 27	1,800	63
165.	A. W. Hoppin	50 19		
177.	Lieut. James Conwell	161 86		
183.	Capt. Stoombs	1 00		
188.	Maurice Schwartzkopf	397 51		
201.	John F. Stein	1 75		
	211. Lieut. Frank Harden		39	50
91	212. John Martin	4 50		
	213. A. B. Rohman	22 75		
216.	Lieut. Oliphant	6 00		
217.	Doct. Cox	98 75		
"	. Louthan & Knox	12 50		
218.	Oscar Blackeley	686 50		
222.	John Dold		9	24
227.	Corasco Mining Co		66	81
228.	J. D. McCormick		20	00
"	. Capt. Roberts	102 50		
230.	Lieut. M. Glasby	74 04		

	". Romaldo Perea	38	
232.	Captain Chapman	24 00	
233.	Lieut. W'm Oman	135 75	
234.	Major S. C. Stapps	124 00	
235.	A. J. Miller		5 31
236.	Price Cooper	659 53	
239.	Capt. Brice		70 00
240.	Doct. Brown	650 00	
252.	Capt. J. D. Slocom	210 39	
254.	Lieut. Sharp	14 25	
255.	Lieut. H. C. Rhoades		1 00
259.	A. G. Gaige	1,289 29	
260.	John S. Watts	61 00	
262.	Regimental fund	18 00	
266.	Lieut. Hugh Johnston	412 88	
273.	Hugh Stephenson	262 99	
	27 . R. B. Blanchard		38 08
92	Amount forward	14,923 58	2,050 57
	275. G. O. Egerton	1,018 62	
276.	J. S. Bartlett	158 50	
277.	Capt. C. P. Nicholes	140 32	
282.	W'm Lent	22 00	
288.	F. A. Percy	910 94	
289.	Henry Raymond	311 75	
291.	Man'l Goytia	52 87	
292.	Doct. J. Q. Adams	101 88	
297.	Hospital dep't	1 75	
300.	Lieut. Nelson Thomasson	2 38	
307.	W. H. Moore & Co		59,162 89
309.	Cooper & Patten	905 29	
310.	Henry C. Allen	1,791 73	
313.	Train a/c	4,571 66	
314.	Doct. O. H. Smith		85 50
317.	Lieut. M. Howard	462 69	
318.	Major D. H. Brotherton	780 24	
319.	David Rankin	264 00	
322.	Fort Bliss adventure		50 00
	". A. Jucle	321 12	
324.	Geo. B. Lyles	2,235 25	
325.	E. F. Mezick	50 50	
327.	Gregoria N. Garcia	93 75	
331.	Capt. S. Ovenshine	174 68	
333.	Mill ac		110 65
334.	Expense ac	15,311 81	
	335. N. Webb	23,293 09	
93	336. A. H. French		3 00
	341. Elis & Allen	15 51	
342.	Arunda & Ochoa	328 90	
346.	Mrs. G. E. Webb	5,211 98	
347.	E. Augerstine	147 18	
348.	J. W. Palmer	270 00	
351.	Joseph Smith	2,231 06	
352.	Brazito purchase	9,697 34	
		85,802 37	61,462 61

On which said exhibit is the following endorsement, to wit:

Gertrude E. Webb vs. Moore & Mitchell. Exhibit A. Filed in my office this 24 March, 1869. Sam'l Ellison, clerk.

EXHIBIT B.—*Memorandum of debts collected.*

L. B. Maxwell		33 50
Col. St. Vrain		2 00
Capt. Shoemaker		675 00
J. B. Watrous		772 58
J. A. Larkin		569 28
J. T. Johnston		1,037 32
	A. A. Craine	33 54
94	G. B. Vaur	42 50
	Jesus Abreu	68 52
Capt. Bergman		208 62
C. W. Kitchen		62 00
S. B. Watrous & Son		581 77
C. S. Hopkins		698 93
S. B. Watrous		668 54
Paucoast & Samples		2,012 91
Gaspar Gurule		225 45
Stapp & Hopkins		5,802 26
Sullivan Heath		387 10
T. L. Roberts		50 00
Frank Samples		441 00
Cha's Williams		200 25
A. C. Coburn		196 15
Manuel Polanko		138 88
Lieut. Martinez		291 80
Capt. Fox		225 17
Major Thompson		127 50
Captain Tapia		34 25
Dr. DuBoise		1 87
Lieut. Mumford		100 00
Captain Farnsworth		345 00
J. M. Andantes		59 25
Shafer & Gonzales		121 50
M. Siler		1,014 15
Antonio Martinez		47 25
P. B. Searcey		128 38
	O. K. Chittenden	59 00
95	W. G. Searcey	114 75
	A. J. Calhoun	84 20
L. Berard & Co		254 80
L. P. Osmer		82 00
A. Harmon		17 12
Jack Chandler		811 92
Henry Rathage		27 00
Capt. Purcell		43 45
" Montoya		13 25
Col. Watts		16 75
Major Thompson		219 00
Lieut. Campbell		471 34
Major Quintana		319 55

	Capt. Farnsworth	40 00
	Lieut. Hodge	126 00
	Severiano Gonzales	100 00
	J. N. Irwin	1,440 19
	Col. Kenzie	8 20
	Juan Perea	156 75
	Anto. Martines	147 25
	James Thomas	440 92
	W. Boyle	43 00
	James Thomas	147 00
	Luis Martin	254 00
	Fir Martin	12 50
	Gen'l Carleton	2,081 43
	M. G. Bishop	771 34
	James May	275 25
	Harvey White Hill	25 25
96	Henry Plattman	415 50
	Shafer & Bro	121 50
	Jesus Ma' Montoya	151 00
	Jose G. Gallegos	206 28
	Sam'l Price	673 50
	Frank Weber	720 25
	Geo. Brown	39 57
	Charles Miller	63 75
	S. B. Elkins for Mrs. Edgar, 225.00, 89.11, 90.00	394 11
	Col. Collins	100 00
	F. P. Abrau	400 00
		29,292 89

Memorandum of debts paid by W. H. Moore & Co.

	Captain Davis	1,694 99
	J. N. Irwin	9,784 29
	C. H. Walker	51 96
	Frank Welsh	827 05
	Dr. Shout	2,517 75
	Lieut. Mumford	786 09
	Green & Bransford	685 71
	Connely & Co	1,041 03
	Col. Enos, official ac	25,000 00
	Capt. Farnsworth	15,465 93
	G. Estardo	320 29
	E. H. Bergman	104 31
	A. M. Adams	139 39
97	A. H. Crawford	315 00
	Col. McCleave	989 72
	McMullen	144 43
	S. Heath	2,035 00
	John Dold	24,722 87
	W. B. Tipton	1,161 99
	Geo. Davis	215 00
	Brunswick & Hecht	529 19
	S. B. Watrous	74 01
	Andres Nelson	217 65

H. V. Harris	2,501	46
D. P. Rankin	407	74
L. Berard & Co	1,487	20
Sundry due-bills	15,539	52
J. Wolff & Sons	1,451	76
Hastings, Lediard & Co	2,243	16
Ca'twell & Shorb	1,205	00
Col. Watts' office a c	696	60
E. R. Taggart	530	07
W. H. Click & Co	2,000	00
Henry T. Blow	764	40
Joseph Murphy	5,825	30
W'm L. Ewing & Co	8,315	51
J. B. Sickels & Co	793	59
Skinner, Price & Co	1,630	16
W'm L. Ewing & Co	4,145	72
W'm Spear & Co	2,213	30
Sonnebon, Seligman & Merx	680	80
J. B. Sickles & Co	971	76
98 C. J. Tilley	504	49
	142,731	19
James Beaky	415	28
W'm Young & Co	3,000	00
Gill & Murphy	2,000	00
A. F. Shapleigh & Co	1,000	00
W'm P. Scott & Co	1,000	00
H. O. Pearce & Co	800	00
Rob't Campbell & Co	4,000	00
Cautwell & Shorb	1,028	77
H. O. Pearch & Co	568	55
J. Wolff & Sons	2,526	00
W'm Young & Co	3,539	71
H. Kenouard & Co	1,837	08
W'm P. Scott & Co	2,317	73
A. F. Shapleigh & Co	687	33
Gill & Murphy	1,566	31
Robert Campbell & Co	3,000	00
Sheldon, Hoyt & Co	2,959	05
H. Renourd & Co	1,924	50
James Beaky	602	87
Gill & Murphy	373	97
C. J. Tilly	564	10
W. H. Chick & Co	1,600	00
Skinner, Price & Co	2,264	80
Henry T. Blow	920	45
W'm L. Ewing	6,684	19
Hooker & Co	450	00
	190,361	88

99 On which said exhibit is the following endorsement, to wit: Gertrude E. Webb vs. Moore & Mitchell. Exhibit B. Filed in my office this 24th day of March, 1869. Sam'l Ellison, clerk.

EXHIBIT C.—*Debts to be paid.*

James Farmer	1,000	00
W. H. Moore	12,498	88
Bills payable	15,696	72
Moore & Mitchell	16,487	34
Hospital dep't	64	44
Post-measurer	101	65
Briant & Bernard	67	20
Dr. Whiting	185	11
Lieut. Barr	17	60
Antonio Gallegos	7	00
Capt. McFenan	112	63
Post-commissary	262	18
Co. A, 5th Inf't	47	66
Dr. Saville	25	00
E. F. Mezick	221	67
Celse Beece	68	00
V. St. Vrain	74	90
100 J. M. Giddings	443	30
Chapman Lodge	68	62
Juan Baptiste Rodrigrus	171	00
Paddy Wiseman	300	00
Luciana Sena	1,040	62
José Gutierres	417	66
L. P. Osmer	78	95
J. M. Kerr	373	55
Thomas McKeowan	100	00
J. Atensie	2,181	67
M. Sais	1,981	79
	54,095	14

Debts due.

Juanna Gutierres	8	00
José Albino Baca	2	00
Manuel Baca	5	00
Emiline	9	00
Geo. Madison	18	88
Lieut. Kelly	3	00
Capt. James Hubbell	1	25
Pedro Sena	8	00
James Adams	3	50
S. W. Kendall	5	00
Vangeisen	2	25
Mertas & Munay	20	75
W'm Butze	58	75
Joseph Secom	7	25
101 Capt. Robb	7	38
José Maria Sandobal	1	00
F. C. Stone	7	50
W. R. Russell	85	00
Lieut. José Gutierres	78	77
" Franc'o Gonzales	72	24

	" L. Dickens	71 25
	" Juan Gallegos	42 03
	Dr. Blanchard	15 88
	Lieut. N. Quintana	11 50
	" Jesus M'a de Herrera	45 06
	" H. P. Martin	105 50
	" Anto. Gallegos	74 31
	" A. P. Damorns	1 50
	Franko Rayade	10 00
	Dr. Ryland	12 25
	Lieut. José Manuel Martines	2 50
	L. W. Leroux	12 87
	Capt. Bacchus	9 00
	Lieut. Julian Solis	4 75
	" Tomas Salazar	121 25
	" Innocencio Martines	54 00
	Teodocio Lucero	7 12
	Capt. José Escavera	.8 63
	" Severiano Martines	54 70
	" Santos Esquibel	43 75
	Epifanio Agriene	34 13
	Capt. Bentura Lovato	66 63
	Lieut. Carmody	83 37
102	Lieut. Pedro Ronquilla	3 56
		1,300 06
	Capt. Apolonio Vigil	34 13
	W'm McLaughlin	122 13
	Lieut. José Cordova	21 25
	Jesus M'a Montoya	16 87
	Lieut. T. A. Smith	9 00
	" G. W. Cook	63 70
	" Regius Ulivarri	9 00
	Capt. S. J. Anthony	7 00
	Lieut. Underhill	70 50
	" S. S. Soule	20 00
	" Baker	24 87
	" Cha's Kerber	21 00
	Capt. Branch	1 50
	Lieut. J. A. Dawson	44 50
	Jos. Kessler	15 75
	Lieut. Hine	1 00
	" J. D. Hardie	16 00
	" Lendrum	8 50
	Capt. La Bargie	34 87
	Lieut. E. V. Rice	80 25
	" Hardy	8 13
	José Castillo	8 00
	Lieut. L. Wilson	10 00
	Jesus Labidé	9 00
	Convent	76 80
	Co. K, 1st Cal. Cav	8 25
	Querimo Martin	26 00
103	W'm Adamson	30 75
	Urban Révera	30 26
	Lieut. Otero	33 00

	Percy J. Eyers	166 02
	Lieut. Mortimore	113 75
	W. W. Pearson	13 50
	Lieut. Coyle	27 75
	Dolores Gallegos	166 58
	Joe Spear	22 50
	Jesus Luna	861 47
	Fran'co Armijo	176 75
	Geo. Morgan	18 00
	Fellipe Agrierra	55 00
	John Hart	2 00
	Desiderrio Salazar	20 00
	J. Anto. Sena	11 18
	Pedro Hernandes	193 25
	José la Luz Rascon	5 00
		4,014 82
	Juan Madina	30 00
	José Rafel Madina	5 63
	J. H. Sylvis	60 50
	A. Staab	5 00
	José Manuel Salazar	3 50
	Lieut. Howard	40 50
	Fellipe Tafolla	18 00
	Cipio Salazar	93 00
	G. W. Gregg	9 46
	Joe Gerrold	6 00
104	Manuel Apadace	5 63
	Henry Patterson	54 88
	Cha's Nihart	53 00
	Juan Valdes	8 00
	Julius Howard	29 00
	José Salano	14 50
	Man'l Silva	44 50
	Co. A, 5th Inf., lodge	7 50
	Juan Larranazo	50 00
	Juannea Lobato	12 00
	Juan Solano	4 00
	J. S. Hart	11 62
	Miss Sloan	12 50
	L't Juan C. Tapia	179 00
	Tapia & Trugillo mess	13 00
	Wiley Jackson	50 50
	Fernando Venuera	10 75
	S. M. Pert	41 63
	Juan Anto. Gallegos	60 00
	Capt. Butcher	172 48
	Marcial Lopes	59 50
	A. Tison	3 00
	Geo. Collins	16 25
	Man'l Salazar	25 75
	Maxino Baca	10 00
	Steadman & Thayer	68 46
	Mrs. Houghton	80 85
	Jno. Brosee	152 50
105	Co. G, 1st N. M. Inf.	11 43

Pasqual Ojolo	52 07
Lieut. Longhead	90 75
H. H. Holford	64 13
Lieut. Elsworth	52 85
Gregorio Montez	15 50
Bidal Lujau	22 00
	5,845 94
R. R. Lamb	8 50
Eugene Leitendorfer	101 25
Lieut. Arnold	35 63
Mrs. Mahony	55 12
Co. A, 5th Inf	25 00
" I, 1st N. M. Cav	53 25
Felipe Areunis	110 50
C. Sampson	82 00
Jesus Mira	21 00
Tomas Lopes	103 00
Fran'co Gomes	15 00
J. N. Buster	8 50
Florance Donahoe	89 75
Ant'o Hurtado	19 75
Mitchell	15 75
Co. D, 1st N. M. Cav	38 13
Lieut. Haberkom	55 25
Captain Birney	13 50
Co. C, 1st N. M. Cav	110 38
" E, " " " "	4 94
Jose Rafail Aragon	5 00
106 Rob't Cowan	40 50
Co. K Lodge	4 50
" I, 5th inf	23 50
Man'l Anto. Greigo	9 75
Captain Witham	49 62
Ames & Emory	91 88
Billy Bowlegs	8 00
William Gardner	168 00
E. R. Sizer	10 00
Denman & Coffman	120 12
Col. Seldon	659 76
Lieut. Sharp	89 63
Col. Abreus' mess	124 13
Lieut. De Hagen	83 25
B. Archuletta	18 50
Co. C, 1st N. M. Cav	74 57
Lieut. Williams	213 61
Francisco Flores	8 00
Lieut. Ellis	137 12
Co. E, 1st N. M. Inf	43 25
	8,958 96
Lieut. Thompson	246 55
Wardwell and Watts	430 50
Geo. Walls	4 50
José D. Pacheco	138 25
Candelario Marlin	27 25

	Lieut. Cannon	190 26
	Powell	9 00
	Mrs. Fuller	68 50
107	Juan Domingo Jaramillo	101 50
	Capt. Hyde	3 50
	Francisco Santianis	13 00
	Co. K, 1st N. M. Inf.	107 50
	Lieut. Lyons	363 56
	José Rael	128 75
	Bickford & Stanly	134 50
	Jesus Gurule	119 50
	Capt. Kemp	102 14
	H. C. Harrison	21 86
	L. Hill	115 56
	Lieut. Riocra	283 63
	K. Nose	5 00
	Lieut. Hodges	254 92
	Capt. Morton	198 25
	Juan Montoya	21 50
	Tomas Martin	180 25
	Mrs. Cole	9 75
	Kronig & Athenus	41 50
	Jerronimo Trugillo	668 78
	August Voss	18 50
	Juan Pando	1,072 73
	Fran'co Lucero	25 00
	Juan Sanchis	190 45
	Juan Perea	156 75
	Metino Chaves	20 50
	José Sandobal	60 18
	H. C. Stevens	104 67
	Mig'l Sandobal	72 00
	Fanning & McKoin	41 50
108	Gregorio Mentenes	202 50
	Jno. H. Mink	69 63
	John Watts	44 50
		15,072 13
	Frank Welsh	307 95
	Pat. Tompkins	64 00
	Jno. McIntyre	12 75
	W. W. Armstrong	21 25
	Frank Mendaven	17 50
	José Gregorio Trujillo	6 50
	W. Knonig, for wool factory	32 00
	Felipe Matin	722 23
	Cha's Robinson	284 87
	Lorenzo Labide	232 25
	C. E. Strode	9 25
	J. D. Chamberlain	104 37
	A. Munroe	17 50
	Tomas Suaso	171 50
	P. J. Farwell	25 00
	Jake Thompson	26 50
	Alec Duval	15 00
	Flesher & Co	3 00

	Francisco Martin	347 00
	Gaige & Christian	22 25
	Anna Shearrer	57 00
	C. F. Shoemaker	8 50
	Joseph Kessler	20 00
	Joshua Jones, jr	78 62
109	Lauriana Baca	50 75
	José G. Gallegos	5,475 95
	Co. B, 1st Cal. Cav	3 00
	" A, " " Inf	59 75
	W. C. Hougton	25 00
	A. J. King	14 36
	N. R. Kemp	40 00
	Jno. McGraw	90 25
	Capt. R. M. Hill	1,424 45
	Perry Kennedy	60 00
	Lieut. Moore	20 00
	" Trujillo	138 00
	Capt. Bristol	5 00
	Major Martin	200 00
	Capt Deus	114 35
	M. Schwartzkopf	27 50
	Miguel Esquibel	2 75
	Jno. M. Jager	131 70
	Pedro Anto. Sena	45 00
	Lieut. S. A. Russell	9 50
	Capt. Pfieffer	75 69
		25,691 92
	Capt. Chacon	100 76
	" Anto. Ma. Vigil	185 94
	Lieut. Howland	40 98
	Capt. José Ma. Valdez	71 13
	F. L. Bronson	754 07
	W'm McAdams	425 34
	H. W. Lauer	350 00
110	T. J. Copp	295 00
	Capt. Enos, private ac	9,814 43
	Co. C, 7th Inf	6 81
	Charles Miller	829 38
	Maj. Whitall	33 95
	J. A. Duvall	781 78
	Capt. Pedro Sanchez	51 13
	Geo. T. Beall	5 42
	Wm. R. Walker	489 37
	Lieut. Ira Claflin	7 60
	Jos. Doyle	12 88
	Ed. Shoemaker	677 37
	J. A. Laken	166 00
	Mill	18,128 98
	W'm Kronig	25,270 03
	Moore, Adams & Co	101,330 95
	H. Osmer	75 00
	James Patterson	33 00
	Lieut. Cha's Porter	196 89
	Capt. L. Telsenthal	977 29

	Cha's French	150 00
	Capt. Lewis	600 00
	Amcito Salazar	14 00
	Col. McMullen	541 87
	Q. M. Dep't	164 58
	Shrz & Fanner	202 48
	Majors, Russell & Waddell	228 00
	G. M. Alexander	157 58
	A. Stuart	74 75
111	John Brosee	30 00
	Moore & Reees	41,746 89
	Judge Houghton	586 16
	Anto. Baca y Baca	22 00
	Frank Webber	43 75
	Lorenzo Labidi	103 40
	Weber & Elritz	687 00
	J. S. Watts	1,129 30
		233,285 16
	Man'l Silva	579 41
	José L. Rivera	166 47
	A. Sena	190 00
	Lieut. Speed	865 18
	José Bibian Herrera	178 25
	Padre Mounicon	1,246 00
	Capt. Henderson	594 47
	David Garland	200 00
	Juan Marcello	27 00
	Ygnacio Solano	140 00
	Cruz Gutierres	150 00
	W. A. Nichols	1,500 00
	Stapp & Hopkins	321 67
		229,443 61
	Mesilla adv	50,458 60
	Bills receivable	23,186 12
	N. Webb	4,692 51
	W. C. Mitchell	5,177 93
		322,958 77

112 On which said exhibit is the following endorsement, to wit: Gertrude E. Webb vs. Moore & Mitchell. Exhibit C. Filed in my office this 24 March, 1869. Sam'l Ellison, clerk.

And be it further remembered that, on Friday the 2nd day of April, A. D. 1869, being the 11th day of the March, A. D. 1869, term of the U. S. district court for the 1st jud' district of New Mexico in and for the county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
W'M H. MOORE & Co. } Bill in chancery.

And now come the parties, by their solicitors, and the complainants

now file their exceptions to the amended answer of William H. Moore; which said exceptions are as follows, to wit:

GERTRUDE E. WEBB
vs.
W'M H. MOORE & CO. } Chancery.

In the Mora district court, of March term of said court, A. D. 1869.

113 *Exceptions to the amended answer of said respondents.*

1st. Said answer does not respond to the 1st rule of court as to money and lands, nor as to who furnished the capital stock.

2nd. Defendant fails to show to the court what was the amount of capital stock belonging to the ferm of N. Webb & Co. at the time of the death of N. Webb, or to attempt to approximate thereto. Exhibit A in said amended answer is uncertain and insufficiant in this, that it is barely a list of names and figures, without any explanation showing to whom the debts are due, or whether there are any credits, or what individuals are solvent or insolvent; and this portion of said amended answer is uncertain, evasive, and by no means responsive to the 2nd order of the court. It is also insufficient in not showing the value of the real estate belonging to said ferm of N. Webb & Co. at the time of his death, and what amount of money, if any.

3rd. It is also insufficient in not stating what amount of debts have been paid, what property sold and debts collected by the firm of W'm H. Moore & Co. since the death of N. Webb.

4th. What amount of property, real or personal, belonging to said ferm of W'm H. Moore & Co., and debts to be collected remain
114 yet unsettled does not appear from the said amended answer.

5th. The amended answer to the 6th order of the court is uncertain and evasive.

6th. The answer to the 7th order of the court is also uncertain and evasive in not showing how much was drawn out by N. Webb in money, and how much was drawn out in other ways.

6th. The amended answer to the eighth order of the court is also uncertain and evasive in not showing the amount of debts that have been paid, and the amount which are solvent, and which are insolvent. And this complainant therefore prays that respondent be compelled to make further and more complete answer therein.

ELKINS & WHEATON,
For Compl't.

On which said paper is endorsed as follows, to wit:

Gertrude E. Webb vs. W'm H. Moore & Co. Chancery. Exceptions to amended answer.

And the exceptions are now confessed by the said counsel of the said defendant, and, by agreement of the parties herein, leave is granted to the complainant to amend her bill herein within fifty days from this date, and the defendant has leave to amend his answer within seventy-five days from this date, and either have leave to take evidence herein on giving ten days' notice after the said amended answer is filed,
115 and this cause stands continued, and publication of the pendency of this suit is ordered to be made as to Sarah Webb, mother of Nathaniel Webb, deceased, upon the making of her a party herein by the complainant.

And be it further remembered that, afterwards, to wit, on the 14th day of June, 1869, the following affidavit of publication was filed; which affidavit and order of publication are in the words and figures following, to wit:

TERRITORY OF NEW MEXICO,
County of Santa Fe:

John T. Russell, being duly sworn, declares and says that the annexed order of publication, in which Gertrude E. Webb is plaintiff and W'm H. Moore and W'm C. Mitchell are defendants, was duly published in the Santa Fé Weekly Gazette, a weekly newspaper published in the city of Santa Fé, New Mexico, on the 20th & 27th days of February, 6th, 13th, 20th,& 27th of March, 1869, respectively, being, in all, six times; and said affiant further states that he was, during all of the time of the publication of said notice, the editor of said newspaper.

JOHN T. RUSSELL.

Sworn and subscribed to before me this 14 day of June, 1869.

SAM'L ELLISON, *Clerk.*

Charges for publication, $19.50.

Order of publication.

GERTRUDE E. WEBB
116 *vs.*
W'M H. MOORE & WILLIAM C. MITCHELL.

It appearing to the satisfaction of the judge, at chambers, that the said William C. Mitchell, one of the defendants in the above-entitled cause, is a non-resident of the Territory of New Mexico, and cannot personally be served with process, it is therefore ordered by the court that publication of the pendency of this suit be made in some weekly newspaper published in this Territory, for six successive weeks, to the said defendant W'm C. Mitchell to be and appear before the district court for the first judicial district for the Territory of New Mexico, on the first day of the next regular term thereof, to be begun and held within the county of Mora, on the fourth Monday of March next, A. D. 1869, there & then to plead, answer, or demur unto said bill, or the matters and thing' therein contained will be taken as confessed as to the said defendant W'm C. Mitchell.

ELKINS & WHEATON,
Solicitors for Complainant.

Attest:

SAM'L ELLISON,
Clerk First Jud. Dist. Court N. M.

117 On which said paper is the following endorsement, to wit:

G. E. Webb vs. Moore & Co. Publication. Printer's fees, $19.50. Filed in my office this 14th day of June, 1869. Sam'l Ellison, clerk.

And afterwards, to wit, on the 22nd day of July, 1869, the following præcipe was filed, which is in the words and figures following, to wit:

In district court for the county of Mora.

GERTRUDE E. WEBB, ADM'X,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL, surviving partners, &c.

Clerk will pleas' issue subpœna to Deluvina Roberts, of Mora, to appear and testify in above cause at next term of district court for county of Mora.
July 22d, 1869.

CLEVER,
For Respondent.

On which said paper is the following endorsement, to wit:

Gertrude E. Webb, adm'x, vs. William H. Moore & others.
118 Præcipe. Filed in my office this 22nd day of July, 1869. Sam'l Ellison, clerk.

And be it further remembered that, on the 18th day of August, A. D. 1869, being the third day of the August, A. D. 1869, term of the U. S. district court for the first judicial district of the Territory of New Mexico, sitting in and for the county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

And now come the respondents, by Mess. Clever & Watts, their attorneys, and now file herein the seperate amended answer of William H. Moore & the seperate answer of William C. Mitchell to the complainant's bill and Exhibits D, E, F, G. H, I, & J, and also now file in connection with said answers the cross-bill of the said William H. Moore and William C. Mitchell against the said complainant & Joab Houghton; which said answers & exhibits are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
119 WILLIAM H. MOORE, WILLIAM C. MITCHELL, & Sarah Webb, def'ts. } Chancery.

In the district court for the first judicial district, Mora County, Territory of New Mexico.

The seperate amended answers of William H. Moore to the bill in chancery filed against him & others in district court for Mora County, 1st judicial district, in and for the Territory of New Mexico, and now pending in said court.

This defendant, William H. Moore, saving and reserving unto himself all benefits of exceptions to the many errors, uncertainties, and imperfections in the said complainant's bill contained, for answer thereunto, or so much thereof as he is advised is material for him to answer unto,

And be it further remembered that, afterwards, to wit, on the 14th day of June, 1869, the following affidavit of publication was filed; which affidavit and order of publication are in the words and figures following, to wit:

TERRITORY OF NEW MEXICO,
County of Santa Fe:

John T. Russell, being duly sworn, declares and says that the annexed order of publication, in which Gertrude E. Webb is plaintiff and W'm H. Moore and W'm C. Mitchell are defendants, was duly published in the Santa Fé Weekly Gazette, a weekly newspaper published in the city of Santa Fé, New Mexico, on the 20th & 27th days of February, 6th, 13th, 20th,& 27th of March, 1869, respectively, being, in all, six times; and said affiant further states that he was, during all of the time of the publication of said notice, the editor of said newspaper.

JOHN T. RUSSELL.

Sworn and subscribed to before me this 14 day of June, 1869.

SAM'L ELLISON, *Clerk.*

Charges for publication, $19.50.

Order of publication.

GERTRUDE E. WEBB
116 *vs.*
W'M H. MOORE & WILLIAM C. MITCHELL.

It appearing to the satisfaction of the judge, at chambers, that the said William C. Mitchell, one of the defendants in the above-entitled cause, is a non-resident of the Territory of New Mexico, and cannot personally be served with process, it is therefore ordered by the court that publication of the pendency of this suit be made in some weekly newspaper published in this Territory, for six successive weeks, to the said defendant W'm C. Mitchell to be and appear before the district court for the first judicial district for the Territory of New Mexico, on the first day of the next regular term thereof, to be begun and held within the county of Mora, on the fourth Monday of March next, A. D. 1869, there & then to plead, answer, or demur unto said bill, or the matters and thing' therein contained will be taken as confessed as to the said defendant W'm C. Mitchell.

ELKINS & WHEATON,
Solicitors for Complainant.

Attest:

SAM'L ELLISON,
Clerk First Jud. Dist. Court N. M.

117 On which said paper is the following endorsement, to wit:

G. E. Webb vs. Moore & Co. Publication. Printer's fees, $19.50. Filed in my office this 14th day of June, 1869. Sam'l Ellison, clerk.

And afterwards, to wit, on the 22nd day of July, 1869, the following præcipe was filed, which is in the words and figures following, to wit:

In district court for the county of Mora.

GERTRUDE E. WEBB, ADM'X,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL, surviving partners, &c.

Clerk will pleas' issue subpœna to Deluvina Roberts, of Mora, to appear and testify in above cause at next term of district court for county of Mora.
July 22d, 1869.

CLEVER,
For Respondent.

On which said paper is the following endorsement, to wit:

Gertrude E. Webb, adm'x, vs. William H. Moore & others.
118 Præcipe. Filed in my office this 22nd day of July, 1869. Sam'l Ellison, clerk.

And be it further remembered that, on the 18th day of August, A. D. 1869, being the third day of the August, A. D. 1869, term of the U. S. district court for the first judicial district of the Territory of New Mexico, sitting in and for the county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

And now come the respondents, by Mess. Clever & Watts, their attorneys, and now file herein the seperate amended answer of William H. Moore & the seperate answer of William C. Mitchell to the complainant's bill and Exhibits D, E, F, G. H, I, & J, and also now file in connection with said answers the cross-bill of the said William H. Moore and William C. Mitchell against the said complainant & Joab Houghton; which said answers & exhibits are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
119 WILLIAM H. MOORE, WILLIAM C. MITCHELL, & Sarah Webb, def'ts. } Chancery.

In the district court for the first judicial district, Mora County, Territory of New Mexico.

The seperate amended answers of William H. Moore to the bill in chancery filed against him & others in district court for Mora County, 1st judicial district, in and for the Territory of New Mexico, and now pending in said court.

This defendant, William H. Moore, saving and reserving unto himself all benefits of exceptions to the many errors, uncertainties, and imperfections in the said complainant's bill contained, for answer thereunto, or so much thereof as he is advised is material for him to answer unto,

answering, says that he admits that the said complainants did take out letters of administration on the estate of Nathan Webb, deceased, as is set fourth in said bill. And this defendant also admits that said complainant is a resident of Mora County, New Mexico, and that this defendant is also a resident of the same county. This defendant
120 also admits that the said Nathan Webb departed this life at El Paso, Texas, on the 15th day of October, 1866. This respondent also admits that the said Nathan Webb, deceased, William C. Mitchell, and this respondent were formerly partners in the mercantile business, and doing business at Fort Union, Mora County, New Mexico, under the firm-name and style of William H. Moore & Co., and that the said William C. Mitchell and this respondent are the surviving partners of *of* said firm of William H. Moore & Co.

This respondent further admits that the said complainant intermarried with the said Nathan Webb at the time and place and in the manner stated in said bill, and that she resided with her husband at Fort Union, New Mexico, until the time mentioned in said bill, when they removed to El Paso County, Texas, and that they continued to reside at El Paso County, Texas, up to the time of the death of said N. Webb, as stated in said bill. This respondent also admits that there are no children living as the fruits of said marriage.

This respondent further admits that the said complainant, on the 27th day of July, 1868, took out ancillary letters of administration on
121 said estate, in Mora County, New Mexico, as stated in said bill.

This respondent further admits that he is informed and believes that, under and by virtue of the laws of the State of Texas, the said complainant is the sole heir to all the personal estate of the said Nathan Webb, deceased, situate in the State of Texas; but said respondent denies that said laws of the State of Texas can vest in said complainant any interest in or title to the personal or real estate of the said Nathan Webb situate and being, at the date of his death, in the Territory of New Mexico, and that such portions of the estate of said Nathan Webb, deceased, as was situate in New Mexico, at the death of the said Nathan Webb, is to be inherited and distributed as provided by the laws of the Territory of New Mexico, and not in conformity with the laws of Texas, which have no opperation or binding force upon property situate within the limits of another State or Territory, the said Nathan Webb having died without making any will or disposition of his property.

This respondent denies that he entered into and formed a copartnership with the said Nathan Webb in the year one thousand eight hundred and fifty-nine for the purpose of carrying on and transact-
122 ing the business of post-sutlers at Fort Union, New Mexico, or as general dealers in merchandise, and positively denies that said Nathan Webb ever was a copartner with the said William C. Mitchell and this respondent, as contractors to furnish the troops stationed at the various military posts in the Territory of New Mexico, as is charged in said bill. But this respondent states the fact to be that, on or about the 13th day of June, A. D. 1861, the said William C. Mitchell and this respondent did enter into a copartnership with the said Nathan Webb, as post-sutlers and merchants in the mercantile business then being by them done and transacted at Fort Union, New Mexico; and it was understood and agreed between the said William C. Mitchell, this respondent, and the said Nathan Webb, deceased, that the said Nathan Webb should have and be entitled to receive an interest of one-eighth in the profits of said business.

This respondent *further*, by way of explanation of said admission of

said Nathan Webb, deceased, into the firm of William H. Moore & William C. Mitchell, further states that said Nathan Webb, deceased,
123 was, on the 16th day of December, 1859, employed in the store of the said William C. Mitchell and this respondent as clerk, at a salary of one thousand five hundred dollars per annum, and so continued in said occupation as clerk until the 18th day of February, 1861, and he then lett Fort Union, New Mexico, for the States, without the intention to return, so far as is known to this respondent, and remained absent until May, 1861, when the said Nathan Webb returned to Fort Union, New Mexico, and expressed a wish to resume his position as clerk, at the same wages formerly paid him, and thereupon the said William C. Mitchell and this respondent co'sented to admit the said Nathan Webb into said firm upon the terms above mentioned, of one-eighth interest in the profits of said business. And upon said terms said Nathan Webb entered into business as a member of the firm of William H. Moore & Co., consisting of the said William C. Mitchell, Nathan Webb, and this respondent.

This respondent further denies that the said Nathan Webb, at the time stated is said bill, or at any other time, furnished or paid into said copartnership business the sum of fifteen thousand dollars,
124 or any other sum whatever, either in cash or property, as is stated in said bill; and this respondent further avers that said Nathan Webb, deceased, at the time he was so admitted into the business of the said William C. Mitchell and this respondent, was utterly destitute of money or property, and, in fact, put nothing into said business but services and business talent, which this respondent admits were valuable and good.

This respondent admits that the said Nathan Webb did take charge of the books and act as cashier of said business, in which capacity he had been previously acting; but this respondent denies that in consideration thereof it was agreed between said partners that the said Nathan Webb should be equally interested in the business of said firm with the said William C. Mitchell and this respondent, and share equally with them in all the profits resulting from the said copartnership business, but states that the consideration of his services was to be said one-eighth interest in the profits of said business, as above stated.

This respondent denies that the terms and conditions and undertakings of said copartners were ever reduced to writing.

This respondent admits that the said William C. Mitchell, Nathan Webb, and this respondent, did continue to carry on and transact
125 the business of said copartnership, as merchants, at Fort Union, New Mexico, from the time of the commencement of the same until some time in the year A. D. 1863, with fair success, and comparatively few losses; but said respondent denies that the an'ual profits of said firm would exceed the sum of one hundred thousand dollars per annum; and also denies that the books and papers of said firm show that any such amount of an'ual profit was made by such firm; and this respondent further states that inasmuch as the business of said firm has not been fully settled and closed, it is impossible for this respondent to state the exact or true amount of profits resulting from said business; but in the subsequent portions of this answer, this respondent places before the court all the facts relating to said business, in order that the court may form its own judgment and opinion as to *to* the amount of an'ual profits likely to result from said business on its final settlement of the same.

This respondent denies that early in the year A. D. 1863, it was agreed by and between the said Nathan Webb, William C. Mitchell, and this

respondent, to extend the business of said copartnership to Southern New Mexico, and El Paso County, Texas, upon the same
126 terms and conditions as is in said bill stated, but states the fact to be that in the year A. D. 1863, it was agreed by and between the said Nathan Webb, William C. Mitchell, and this respondent, to commence a mercantile business at Franklin, Texas, under the name and style of N. Webb & Co., and that the said Nathan Webb was to take charge of, controle, and direct said business in Franklin, Texas, and that in the said business of said firm of N. Webb & Co., so done in Franklin, Texas, and Southern New Mexico, the said Nathan Webb, William C. Mitchell, and this respondent, should be equally interested, and share equally the profits and loss of said business so conducted by them under the name and style of N. Webb, & Co.; but this respondent avers that said enterprise of N. Webb & Co. so entered upon did not in any manner change, alter, or abrogate the interest of said Nathan Webb in the business of W. H. Moore & Co. a' Fort Union, New Mexico, and that said interest of said Nathan Webb in the firm of W. H. Moore & Co. still continued to be a one-eighth interest in the profits of the business of W. H. Moore & Co. at Fort Union, as was at first agreed upon, when said Nathan Webb was admitted into said firm of W. H.
127 Moore & Co. This respondent admits that it was understood and agreed by and between the said Nathan Webb, W'm C. Mitchell, and this respondent, that the said William H. Moore should remain at Fort Union in charge of the business of W. H. Moore & Co. at Fort Union, New Mexico; that the said Nathan Webb should take charge of the business of N. Webb & Co. in Franklin, Texas, and Southern New Mexico, and that the said William C. Mitchell should remain in the States for the purpose of perchasing and shipping goods to New Mexico, in behalf of the interest of said copartnership, which was done by said parties in persuance of said agreement.

This respondent admits that the business of the firm of N. Webb & Co., at Franklin, Texas, and in Southern New Mexico, was established at the times and places in said bill mentioned; but further states that the entire capital stock and good' for the *the* said firm of N. Webb & Co. was furnished upon the credit of the firm of W'm H. Moore & Co., at Fort Union, and paid for by said firm of W'm H. Moore & Co.

This respondent admits that the business of N. Webb & Co.
128 was done at Franklin, Texas, as stated in said bill, and that at times the said Nathan Webb, jointly with other persons, did obtain contracts to furnish supplies to the United States, upon which contracts money was made, but what amount this respondent does not know, nor has he been able to find out from the books of N. Webb & Co., and from an examination of the books of N. Webb & Co. this respondent avers that it will appear that the Government contracts in which the said Nathan Webb was interested was the only business transacted by him in Franklin, Texas, and Southern New Mexico, from which any profits were received.

This respondent admits that in addition to the store established at Franklin, Texas, the said Nathan Webb, William C. Mitchell, and this respondent, became post-sutlers at Fort Bliss, Texas, and the business, both at Franklin and Fort Bliss, Texas, was supervised and directed by the said Nathan Webb until the time of his death; but he denies that the said business at the above-named places was successful, or that any profits whatever resulted from the same; and the keeping of the books and the management ot the business of said firm of N. Webb &
129 Co. remained in the hands and under the controle of the said

Nathan Webb up to the time of his death, from the commencement of said business, and if the business of the said firm of N. Webb & Co. did result in any profit, the books of N. Webb & Co., as kept by and under the supervision of said N. Webb, do not show it, nor furnish any evidence of said profits.

This respondent denies that from the time the said Nathan Webb commenced business as a partner in Mesilla and Franklin as aforesaid, up to the time of his decease, that there was made and gained as clear profit upon their entire business above one hundred thousand dollars per annum; and this respondent further denies that the said William H. Moore, on several occasions or on any occasion, or in various letters or in any letter, to the said Nathan Webb, deceased, declared that said copartnership had acquired during the war of the rebellion several hundred thousand dollars or any other sum; and he also denies having stated that they often received at said store in Fort Union more than two thousand dollars per day, and if said sum had been received at any time per day it would afford no certain or definite data upon which to estimate the entire net profits of said business of W. H. Moore & Co.

130 This respondent denies that balance-sheets showing the amount of profits of said copartnership, made out from the books at Fort Union, were abstracted from said complainant as charged in said bill, because this respondent states the fact to be that only one balance-sheet was ever made out from the books of said firm of William H. Moore & Co., and that balance-sheet has not been abstracted by any one, as it is in the possession of said complainant and filed with her bill of complaint, and marked as Exhibit C in said bill.

This respondent further denies that the amount of profits during the years 1864, 1865, and 1866, were equal to the sum of one hundred thousand dollars per annum, or anything like that sum, and inasmuch as said business of said firm of W. H. Moore & Co. and N. Webb & Co. is yet unclosed and unsettled, it is not possible for this respondent to state with certainty the profits and loss attending the business of said firms of W. H. Moore & Co. and N. Webb & Co., but this respondent will state fully all the facts relating to said business so far as known to him and shown by the books of said firms of W. H. Moore & Co. and N. Webb & Co., in order that the proper estimate may be made by the

131 court on the final hearing of this case. This respondent again most positively denies that during all or any of the time specified in said bill *that* the said Nathan Webb was a full and equal partner in all the business of said copartnership, and as such entitled to one-third of the profits of the same; and the said respondent avers that the said Nathan Webb had no interest whatever in the business of W. H. Moore & Co. at Fort Union, except a one-eighth interest in the profits of said business, and had no interest in the business of the firm of N. Webb & Co., conducted by him at Franklin, Texas, and Southern New Mexico, except a one-third interest in the profit and loss of said business of N. Webb & Co. in common with the said William C. Mitchell and this respondent, each of whom in like manner had a one-third interest in said business of N. Webb & Co., in common with the said Nathan Webb, deceased.

This respondent admits that, after the death of the said Nathan Webb, the said complainant, as administratrix and heir-at-law of her deceased husband, to an interest in his estate, did apply to this respondent, William H. Moore, for a settlement of the affairs of the said copartnership so far as the estate of her deceased husband, the said Nathan

132 Webb, was concerned; but the said respondent, William H. Moor',

denies that he requested the said complainant to take no further steps looking to a prompt and speedy settlement of the estate of the said Nathan Webb, deceased; and the said respondent, William H. Moor', also denies that he requested the said complainant to take no further steps looking to a prompt and speedy settlement of the estate of the said Nathan Webb, deceased husband of said complainant, and that he desired that the said complainant would allow the interest and share of the said Nathan Webb, deceased, in said business to be retained by the said William H. Moor' and the said William C. Mitchell, for the use and benefit of said copartnership, or that this respondent promised that the interest of the said Nathan Webb, deceased, should remain, as in his lifetime, in said business, undisturbed and undivided, or that the said complainant should not withdraw the shares and interest of her said husband, Nathan Webb, deceased, from the business of said copartnership until the time stated in said bill, but states the fact to be that when

133 the said complainant applied to this respondent for a settlement of the interest of her said deceased husband, Nathan Webb, this respondent replied and stated to said complainant that it was utterly impossible to settle up at once and ascertain the condition of the business of N. Webb & Co. and W'm H. Moore & Co., and then ascertain what was the interest of the said Nathan Webb in the said copartnership business, for the reason that at the death of the said Nathan Webb there remained on hand at the store in Franklin and Fort Bliss, Texas, a large amount of goods unsold, and in Southern New Mexico that said firm of N. Webb & Co. had due and owing by said firm a large amount of debts to be paid, and that there was due and owing on the books of said firm of N. Webb & Co. a large amount to be collected if possible; that it was not possible for him to know, nor was it proper for him to make settlement with her of the said interest of said Webb in said business, until the debts of said firm were fully paid, the goods of said firm sold and converted into cash, and the debts so far as possible, due to said firm of N. Webb & Co., were collected, and that until such things were done it was impossible to know what was the true in-

134 terest of said complainant as administratrix of Nathan Webb, deceased, in said business, and it was not his duty to make any settlement or payment of said supposed interest until the said business was finally settled up and closed, and then it would be a pleasure as well as a duty for this respondent and the said William C. Mitchell, as surviving partners of the firm of W. H. Moor' & Co., at Fort Union, New Mexico, and of N. Webb & Co., at Franklin and Fort Bliss, Texas, to pay over to the said complainant, as the administratrix of Nathan Webb, whatever sum might be found due her as such administratrix and heir to certain portions of the personal property and real estate of which the said Nathan Webb died possessed, after the payment of his just debts.

This respondent further states that it is his intent and the intent of the said William C. Mitchell, as the surviving partners of the firm of W. H. Moore & Co. and N. Webb & Co., to close up the business of said firm as fast as possible, and whatever interest the said complainant may have in said business, this respondent and the said William C. Mitchell are ready, willing, and able, fully to pay and discharge, if not shown to have been already paid.

135 This respondent denies that the said William C. Mitchell and this respondent, or either of them, at any time agreed with the said complainant, as administratrix of the estate of her deceased husband, that in case she would not withdraw the interest of her said hus-

band's estate from said copartnership, that the estate at the time of settlement should be allowed an equal share in all the profits that might accrue from the transacting and carrying on of said business as surviving partners until the 1st day of July, A. D. 1867.

This respondent denies that he especially requested of the said complainant not to take any further steps in the settlement of the estate of her deceased husband, but admits that he may on some occasion have said to said complainant that it was not necessary for her to consult with or seek the advice of any lawyer on the subject of said settlement, and said respondent admits that he did state to said complainant that he would protect and guard well the interest of said estate and settle the same as soon as could be properly done, upon the most just and equitable principles, and such is still the intention of this respondent.

136 This respondent admits that the interest of the said Nathan Webb, deceased, from the time of his death up to the present time, has remained unsettled, for the reasons above stated, except such sums as has been drawn by and paid to said complainant.

This respondent denies that said business of said copartnership has been conducted with the same success and advantage as at any period previous to the death of said Webb.

This respondent most positively denies all combination and confederation charged in said bill to wrong and injure the said complainant in the premises.

This respondent admits that the said complainant did address a letter to him about the time stated in said bill, urging and requesting this respondent to give the said complainant some definite answer as to a settlement with her, and as to what was the interest of her said husband, Nathan Webb, in said copartnership. And said respondent admits that he did not answer said letter for the reason that he had frequently explained to said complainant the reasons why said settlement could not be then made, and why said interest could not be then

137 ascertained.

This defendant denies that there was the amount of goods, wares, and merchandise at Fort Union, New Mexico, stated in said bill; and also denies that the same was worth one hundred thousand dollars, as is stated in said bill; but states the fact to be that, there was only at said time, sixty or seventy thousand dollars' worth of goods on hand, to the best information and belief of this defendant.

This respondent admits that there was also, at said time, other stocks of goods at Fort Bliss and Franklin, Texas, but denies that the same amounted in value to the sum of one hundred thousand dollars and upwards, as is in said bill stated; but states the fact to be that the same did not, as this respondent is informed and believes, exceed in value seventy thousand dollars.

This respondent admits that there was owing to the said copartnership business, at Franklin, Texas, as appears by the books

138 of N. Webb & Co., the sum of $85,802.37, as will more fully appear by a list of said debts taken from said books, and hereby made a part of this answer, and marked Exhibit A, herein. This respondent states that many of said debts due and owing to said firm of N. Webb & Co. are worthless and the parties insolvent, and with the best exertions of a special agent employed for that purpose, only the sum of $30,793.06 has been collected, as appears by the enclosed list, marked as Exhibit herein, and asked to be made a part of this answer.

This defendant also admits and states the fact to be that, at the time of the death of the said Nathan Webb there was due and owing by the said firm of N. Webb & Co., of Franklin, Texas, to the firm of W. H. Moor' & Co., of Fort Union, New Mexico, the sum of about $66,000, and that there has been paid of that sum the amount of $30,793.06 only.

This respondent denies that there was cash on hand at Fort Union or Franklin, Texas, belonging to said copartnership, to a large amount, as is stated in said bill; but states the fact to be that, if there was any amount of money on hand at Franklin, Texas, or Fort Bliss, at the
139 time of the decease of the said Nathan Webb, the same was taken and disposed of by the said complainant and her agents, who had control of the store and safe for weeks after the death of said Nathan Webb, and said sum of money so on hand at Franklin, at the death of Nathan Webb, must have *went* into the hand of the said complainant and her agents, as the same never came into the hands of said William C. Mitchell and this respondent, who did not take possession of said business of N. Webb & Co., at Franklin, Texas, until many weeks after the death of said Webb, and during all of which time said business was under the management and control of said complainant and her agents and employees.

This respondent further denies that there was deposited with the house of Robert Campbell & Co., Saint Louis, Missouri, or elsewhere in the States, the sum of three hundred thousand dollars, or any sum, except a sufficiency to enable the said respondent and the said William C. Mitchell to discharge their liabilities as they fell due, and make such purchases as the necessity of their business demanded, either in the name of William H. Moore, or that of William H. Moore & Co. This respondent further denies that at the said time in said bill
140 mentioned, the said copartnership owed but a small amount for goods, or that the various stocks of goods above mentioned were fully paid for, as is in said bill stated. This respondent denies that the said complainant has only drawn from said copartnership business about the sum of four thousand dollars, as in said bill stated; and this respondent avers that said complainant has drawn out of the business of said N. Webb & Co., and been paid to her therefrom, the sum of $5,211.98, as will appear by reference to exhibit filed herein as a part of this answer, taken from the books of N. Webb & Co. This respondent further denies that at the time of the death of said Nathan Webb, husband of the said complainant, his interest in said copartnership was not less than one hundred thousand dollars in cash; but this respondent states the fact to be that, when said business is closed and the correct statement of profit and loss made, the said interest of said Webb will appear less to a wonderful extent than the amount stated in said bill.

This respondent admits that he and the said William C. Mitchell
141 have ample means belonging to said copartnership to pay and discharge any balance which may be found due to said complainant, after deducting the amount taken from said firm of N. Webb & Co., and appropriated to the private and individual use of N. Webb, the husband of said complainant, amounting, as appears by the books of N. Webb & Co., kept by N. Webb, to the sum of $23,130.59; *as appears by said books of N. Webb & Co.*, and a copy of which account is hereby made a part of this answer, marked as Exhibit D herein, and after deducting the amount paid to said complainant since the death of her said husband. This respondent avers that he is ready and willing to pay whatever balance may be found justly due said complainant, on a

full and final settlement of said business; and the said respondent avers that he and the said William C. Mitchell are not required by law to pay over to said complainant a single dollar until the final settlement of said business is made and completed. This respondent admits that, although some time has elapsed since the death of the said Nathan Webb, husband of said complainant, yet this respondent and the said William C. Mitchell, in spite of their best exertions to that end, have been
142 unable to close up all the copartnership business in which the said Nathan Webb was interested, for the reason, that a portion of the goods on hand at Franklin and Fort Bliss, at the death of said Nathan Webb have just been disposed of, and many of the accounts due said firm of N. Webb & Co. are yet uncollected, for which reasons, no full and definite statement of the condition of the business of the firm of N. Webb & Co. can now be made, and no correct and final balance-sheet of said business of N. Webb & Co. can now be made.

The said respondent denies that the delay of the said William C. Mitchell and this respondent in said settlement is for the purpose of defrauding the said complainant of her just rights or of using the funds belonging to said estate to carry on their own private business; and said respondent states that said charge comes with a bad grace from the widow of a former clerk, who, together with her deceased husband, has drawn out of the said business for their private use the sum of $42,992.02 *dollars* in the period of five years, and is not a very bad business for a clerk who was glad to get employment at a salary of fifteen hundred dollars per annum. This respondent admits that without
143 consulting the said complainant, he and the said William C. Mitchell, as surviving partners of the firm of N. Webb & Co., have been removing the goods remaining at Franklin, Texas, and Fort Bliss, Texas, to the Territory of Arizona, as they believe the' had a right to do, for the reason that he was informed by Henry Cuniffe, the agent of this respondent and the said William C. Mitchell, as surviving partners, that the said goods could not be sold at Franklin, Texas, and Fort Bliss, Texas, at any price, and this respondent was informed and believes that said goods could be sold in Arizona, and in fact are now sold and disposed of in that Territory. This respondent denies that the funds belonging to the said Nathan Webb are being used by said defendant or transferred by them out of the jurisdiction of this court, except such amount as may be necessary to enable this respondent and the said William C. Mitchell, as surviving partners, to close up said business of said copartnership. This respondent further denies that there is only a small stock of goods on hand at the store at Fort Union, or that said defendants are using any portion of the funds belonging to the estate of Nathan Webb, in taking contracts to supply the
144 troops at Fort Union and other military posts in the Territory of New Mexico, or in various, or any, mining enterprises and speculations, as stated in said bill.

This respondent cannot state what means the said complainant has, but he does state that he has, always and on all occasions, supplied the said complainant with sufficient funds for her personal use and benefit whenever called upon for that purpose by the said complainant.

This defendant having now answered the material allegations in the original bill filed herein, for answer to the allegations in what is called the supplement-bill of said complainant, says that, some time during the summer, in the month of August or September, 1868, upon application made by the said complainant to this respondent, for an examination of the books of said firm of N. Webb & Co. and W. H. Moore &

Co., and upon said application, he did consent to allow the said complainant to appoint some one to examine the books of said firms, jointly with a skillful book-keeper that said respondent then had employed in posting the books of said firms, and every facility was afforded said agent of said complainant to make all examinations of said books de-
145 sired by him as such agent. The said respondent denies that he promised said complainant that said books should be duly posted by the 25th day of December last, or that he would on that day make a settlement of the interest of her said husband in said business. This respondent, by way of further answer herein, would state to the court that the capital stock of the said firm of William H. Moore & Co., at the date of said partnership with the said Nathan Webb, amounted to forty-six thousand three hundred and eighty-two dollars & $\frac{30}{100}$ths, ($46,382.30,) and consisted of goods, wares, and merchandise then on hand, and debts due said firm; and the said firm, at that date, was owing the sum of thirty thousand three hundred and thirty-seven $\frac{83}{100}$ dollars, leaving as the actual capital of said firm at its commencement, the sum of sixteen thousand forty-four dollars and forty-seven cents, ($16,044.47,) all of which said capital was furnished by the said William C. Mitchell and this respondent, as the books of said company of W. H. Moore and Company will more fully show.

This respondent further states that it is impossible for him to
146 state the exact amount of capital belonging to the firm of N. Webb and Company at the death of said Webb; but it appears that the same consisted of debts due N. Webb & Co., on the books of said firm, a lot of merchandise on hand, and a tract of land situated in Doña Aña County, New Mexico, costing the said N. Webb & Co., as appears by said books, the sum of nine thousand six hundred and ninety-seven dollars and thirty-four cents, and purchased of the heirs of Hugh Stephenson.

This respondent further states that, after using the best exertions and the employment of the best and most skilful agent, he has been unable to realize out of the goods sold and debts collected, but the sum of $30,793.06 *cents*, which said amount as collected has been passed to the credit of N. Webb & Co. in discharge of a portion of the debt due from to the firm of W. H. Moore & Co.

This respondent further states that Exhibit A, filed herein, shows the unpaid debts of the firm of N. Webb & Co., at the of said N. Webb, amounted to the sum of $61,462.61, and the ostensible assets of said firm amounted to the sum of $85,802.37, which, in case all
147 the debts had been collected, would have given a profit of the business of N. Webb & Co. of $24,439.76, if the goods, wares, and merchandize, on hand at the death of said Nathan Webb, could have been sold at a fair price; but the said respondent states that the goods on hand had to be sold at a great loss, after much time, trouble, and expense in sending to a distant market, and the real estate above mentioned as the Brazito tract, is not now worth exceeding $4,000 *dollars*, having cost N. Webb & Co. the sum of $9,697.34.

This respondent further states that he has been informed and believes that a large portion of the debts due said firm of N. Webb & Co. are worthless, and cannot be collected, on account of the insolvency of the parties owing said amounts.

This respondent, as a sample of worthless debts, the collection of which is past hope, refers the court to the following: Nathan Webb, deceased, $23,293.09; Mrs. Gertrude E. Webb, the complainant, $5,211.98; Joab Houghton, $3,208.45; making the sum of $31,713.52 drawn

148 out of the assets of the firm of N. Webb & Co. by Nathan Webb, in his life-time, and by the complainant since his death, and by Joab Houghton, the brother-in-law and agent of the said complainant, being a sum more than sufficient to exhaust all the profits of said firm of N. Webb & Co., if all the debts due the said firm could be collected, and if the goods remaining on hand could have been sold at cost.

This respondent would further state that, on a full settlement of the business of the firm of N. Webb & Co. up to the present date, there has been a loss amounting to the sum of $35,019.70, and the said respondent asks that the said Nathan Webb, deceased, be charged with the sum of $11,673.23, one-third the amount of said loss, on a final settlement of the business of said firm of N. Webb & Co. and William H. Moore & Co.

This respondent would further state that said firm of N. Webb & Co. was conducted by said Nathan Webb with much extravagance and undue and excessive expense, as will be seen by reference to the expense-account on said books of N. Webb & Co., amounting to the sum of $15,311.81 from the establishment of the firm of N. Webb & Co.

149 up to the death of the said Nathan Webb, when in truth and in fact said business might have been conducted with one-half that amount of expense.

This respondent would further state that the goods, wares, and merchandize of the firm of N. Webb & Co., at the death of Nathan Webb, were estimated at the sum of seventy-eight thousand nine hundred and $\frac{16}{100}$ dollars; but this estimate was based upon the original cost and freight of said goods, and upon a sale of said goods for the best price that could be had, and in the best market that could be found, said goods, wares, and merchandize only brought the sum of $28,982.06, credited as above stated on the books of W. H. Moore & Co. to the firm of N. Webb & Co. in part payment of the indebtedness of the firm of N. Webb & Co. to the firm of W. H. Moore & Co.

This respondent further states that one of the said lots in El Paso, Texas, so purchased by said Nathan Webb with the funds of N. Webb & Co. is lot No. 109, in block No. 24, as found in the map of said town as made by Anson Mills. The title to the same was made in the name of the complainant, and was occupied by the said Nathan

150 Webb as his residence during his life-time, and is worth the said sum of 500$ paid for the same.

This complainant would further state that said Nathan Webb, in his life-time, made with the funds of said N. Webb & Co. purchases of other houses and lots in the said town of El Paso, for which he paid, with the funds of N. Webb & Co. to the amount of about $2,000, and took the title-deeds for said purchases in his own name; but as said titles are not in the possession of this respondent, he is unable to give the number and description of said lots, but asks to be permitted to prove the said value and description of said property prior to the final hearing of this case, and, upon the final hearing, the said William C. Mitchell and this respondent asks that the title to said houses and lots be decreed to them as the surviving partners of the said firm of N. Webb & Co., in order that the said property or the proceeds of the sale of the same may be applied to the payment of the outstanding unpaid debts of said firm of N. Webb & Co., as justice to creditors takes precedence of

151 generosity to partners in the closing of the business of a badly-managed and insolvent firm.

This respondent further states that all the debts of the firm of N. Webb & Co. have been fully paid and satisfied by the said W. H. Moore

Co., and upon said application, he did consent to allow the said complainant to appoint some one to examine the books of said firms, jointly with a skillful book-keeper that said respondent then had employed in posting the books of said firms, and every facility was afforded said agent of said complainant to make all examinations of said books de-
145 sired by him as such agent. The said respondent denies that he promised said complainant that said books should be duly posted by the 25th day of December last, or that he would on that day make a settlement of the interest of her said husband in said business. This respondent, by way of further answer herein, would state to the court that the capital stock of the said firm of William H. Moore & Co., at the date of said partnership with the said Nathan Webb, amounted to forty-six thousand three hundred and eighty-two dollars & $\frac{30}{100}$ths, ($46,382.30,) and consisted of goods, wares, and merchandise then on hand, and debts due said firm; and the said firm, at that date, was owing the sum of thirty thousand three hundred and thirty-seven $\frac{83}{100}$ dollars, leaving as the actual capital of said firm at its commencement, the sum of sixteen thousand forty-four dollars and forty-seven cents, ($16,044.47,) all of which said capital was furnished by the said William C. Mitchell and this respondent, as the books of said company of W. H. Moore and Company will more fully show.

This respondent further states that it is impossible for him to
146 state the exact amount of capital belonging to the firm of N. Webb and Company at the death of said Webb; but it appears that the same consisted of debts due N. Webb & Co., on the books of said firm, a lot of merchandise on hand, and a tract of land situated in Doña Aña County, New Mexico, costing the said N. Webb & Co., as appears by said books, the sum of nine thousand six hundred and ninety-seven dollars and thirty-four cents, and purchased of the heirs of Hugh Stephenson.

This respondent further states that, after using the best exertions and the employment of the best and most skilful agent, he has been unable to realize out of the goods sold and debts collected, but the sum of $30,793.06 *cents*, which said amount as collected has been passed to the credit of N. Webb & Co. in discharge of a portion of the debt due from to the firm of W. H. Moore & Co.

This respondent further states that Exhibit A, filed herein, shows the unpaid debts of the firm of N. Webb & Co., at the of said N. Webb, amounted to the sum of $61,462.61, and the ostensible assets of said firm amounted to the sum of $85,802.37, which, in case all
147 the debts had been collected, would have given a profit of the business of N. Webb & Co. of $24,439.76, if the goods, wares, and merchandize, on hand at the death of said Nathan Webb, could have been sold at a fair price; but the said respondent states that the goods on hand had to be sold at a great loss, after much time, trouble, and expense in sending to a distant market, and the real estate above mentioned as the Brazito tract, is not now worth exceeding $4,000 *dollars*, having cost N. Webb & Co. the sum of $9,697.34.

This respondent further states that he has been informed and believes that a large portion of the debts due said firm of N. Webb & Co. are worthless, and cannot be collected, on account of the insolvency of the parties owing said amounts.

This respondent, as a sample of worthless debts, the collection of which is past hope, refers the court to the following: Nathan Webb, deceased, $23,293.09; Mrs. Gertrude E. Webb, the complainant, $5,211.98; Joab Houghton, $3,208.45; making the sum of $31,713.52 drawn

148 out of the assets of the firm of N. Webb & Co. by Nathan Webb, in his life-time, and by the complainant since his death, and by Joab Houghton, the brother-in-law and agent of the said complainant, being a sum more than sufficient to exhaust all the profits of said firm of N. Webb & Co., if all the debts due the said firm could be collected, and if the goods remaining on hand could have been sold at cost.

This respondent would further state that, on a full settlement of the business of the firm of N. Webb & Co. up to the present date, there has been a loss amounting to the sum of $35,019.70, and the said respondent asks that the said Nathan Webb, deceased, be charged with the sum of $11,673.23, one-third the amount of said loss, on a final settlement of the business of said firm of N. Webb & Co. and William H. Moore & Co.

This respondent would further state that said firm of N. Webb & Co. was conducted by said Nathan Webb with much extravagance and undue and excessive expense, as will be seen by reference to the expense-account on said books of N. Webb & Co., amounting to the sum of $15,311.81 from the establishment of the firm of N. Webb & Co.

149 up to the death of the said Nathan Webb, when in truth and in fact said business might have been conducted with one-half that amount of expense.

This respondent would further state that the goods, wares, and merchandize of the firm of N. Webb & Co., at the death of Nathan Webb, were estimated at the sum of seventy-eight thousand nine hundred and $\frac{16}{100}$ dollars; but this estimate was based upon the original cost and freight of said goods, and upon a sale of said goods for the best price that could be had, and in the best market that could be found, said goods, wares, and merchandize only brought the sum of $28,982.06, credited as above stated on the books of W. H. Moore & Co. to the firm of N. Webb & Co. in part payment of the indebtedness of the firm of N. Webb & Co. to the firm of W. H. Moore & Co.

This respondent further states that one of the said lots in El Paso, Texas, so purchased by said Nathan Webb with the funds of N. Webb & Co. is lot No. 109, in block No. 24, as found in the map of said town as made by Anson Mills. The title to the same was made in the name of the complainant, and was occupied by the said Nathan

150 Webb as his residence during his life-time, and is worth the said sum of 500$ paid for the same.

This complainant would further state that said Nathan Webb, in his life-time, made with the funds of said N. Webb & Co. purchases of other houses and lots in the said town of El Paso, for which he paid, with the funds of N. Webb & Co. to the amount of about $2,000, and took the title-deeds for said purchases in his own name; but as said titles are not in the possession of this respondent, he is unable to give the number and description of said lots, but asks to be permitted to prove the said value and description of said property prior to the final hearing of this case, and, upon the final hearing, the said William C. Mitchell and this respondent asks that the title to said houses and lots be decreed to them as the surviving partners of the said firm of N. Webb & Co., in order that the said property or the proceeds of the sale of the same may be applied to the payment of the outstanding unpaid debts of said firm of N. Webb & Co., as justice to creditors takes precedence of

151 generosity to partners in the closing of the business of a badly-managed and insolvent firm.

This respondent further states that all the debts of the firm of N. Webb & Co. have been fully paid and satisfied by the said W. H. Moore

& Co., except the debt due to the firm of W. H. Moore & Co. by the said firm of N. Webb & Co., for the payment of which the said real estate and all the assets of said estate of said Nathan Webb, deceased, are wholly insufficient, and this respondent and the said William C. Mitchell ask the court to convert into cash the said houses and lots, in order that the value thereof may be used by them in the payment of the debts yet unpaid of the firm of N. Webb & Co. This respondent would further state that the title to the lands situate in Doña Aña County, Territory of New Mexico, called the Brazito tract of land, was executed by Adelaide Zabriskie and James A. Zabriskie on the 20th day of May, 1868, for a one-sixth interest in a tract of land known as Fort Fillmore, and more particularly known as the Brazito tract of land, containing about twenty-one thousand acres, situate in the county of Doña Aña, and conveyed by Hugh Stephenson to said Adelaide Zabriskie (formerly
152 Stephenson) by deed dated 22nd day of July, 1859, all of which will more fully appear by reference to copy of said deed hereby made a part of this answer, and marked as Exhibit I, herein; and also on the 20th day of May, 1868, Benancia French, and A. H. French, her husband, deeded to the same parties an undivided sixth interest in and to the same tract of land, as will more fully appear by reference to a copy of said deed hereby made a part of this answer, marked as Exhibit J, herein; also about the same time one Leonora Perez, daughter of the said Hugh Stephenson, executed a deed to an undivided sixth interest in and to the same tract of land, which said deed is lost or mislaid, and a certified copy of which, so soon as can be obtained, is asked to be made a part of this answer, marked as Exhibit K, herein.

This respondent would further state that the money paid for said lands was paid by the firm of N. Webb & Co. and with their funds, and the said Elizabeth E. Webb, meaning the complainant, Gertrude E. Webb, did not pay one cent of the purchase-money mentioned in
153 said deeds, as the books of N. Webb & Co. will show, and the said lands by right belong exclusively to this respondent and the said William C. Mitchell as the surviving partners of the firm of N. Webb & Co. This respondent and the said William C. Mitchell would further state that, on the 16th day of October, 1866, the capital stock of the firm of W'm H. Moore & Co. amounted to about the sum of $285,834.73, as appears by the books of said company, consisting of goods, wares, & merchandise on hand, debts due and owing to said firm, the storehouse at Fort Union, and the undivided half of the mill on the Mora in Mora County, and a train of thirty-one wagons and two hundred and eighty mules.

This respondent would further state that since the last term of this court, to wit, on the 26th of May, 1869, mules to the number of two hundred and fifteen were, in open daylight, within a mile of Sheridan, Kansas, stolen, taken, and driven away by a party of Indians belonging to the tribe called Cheyennes, and only sixty of said mules have been recaptured from said Indians, leaving the number of mules so stolen and hopelessly lost, one hundred and fifty-five mules, of the value of two hundred dollars each, amounting to the sum of thirty-one thou-
154 sand dollars; which said sum is to be deducted from the available means of W. H. Moore & Co. since the filing of the amended answer herein, on the 24th day of March, 1869.

This respondent would further state that the said W. H. Moore & Co. are the owners of an undivided half interest in the mill and mill-property situate in Mora County, New Mexico, on the Mora River, a short distance below the junction of the rivers Mora and Sapello, which said

mill-property is owned jointly with one William Kronig, and said half-interest in said mill and mill-property has cost the said William H. Moore & Co. the sum of about $7,500, and which said half-interest in said property is reasonably worth what it cost the said W. H. Moore & Co.

This respondent further states that the title to the land on which said mill is situate was on the 15th day of August, 1857, confirmed to John Scolly, Augustine Durau, Gullermo Smith, Santiago Giddings, Gregorio Trujillo, and Francisco Romero, and subsequently, by act of Congress passed 21st of June, 1860, confirmed by Congress to the extent of five square leagues; and which said property, for many years, has
155 been, and still is, in the possession of William Kronig, and claimed by him as the purchaser of the original grantees, their heirs, and vendees.

This respondent would further state that the said mill-property has no land attached to the same, except such as the mill-buildings occupy and cover, with a right of entry and exit over the said lands of said William Kronig.

This respondent would further state that the store-house and buildings connected therewith, belonging to the firm of W'm H. Moore & Co., situate at Fort Union, in Mora County, New Mexico, are located upon the military reservation of the United States known as Fort Union, Mora County, New Mexico, and said buildings were erected with the permission of the commander of said post of Fort Union, for the use of the said William H. Moore & Co., as a sutler's store, and cost the said W'm H. Moore & Co. the sum of $4,644.40.

This respondent would further state that, having no title to the land on which said buildings are placed, when the business of W. H. Moore & Co. at Fort Union shall cease, as merchants, sutlers, and post-traders, they expect said store-house and buildings will be a total
156 loss to the firm of W'm H. Moore & Co.

This respondent would further state that when, on the 2d day of July, 1866, Charles W. Adams was admitted into the firm of W. H. Moore & Co., said store-house and buildings having been improved, and having increased in value, were turned into the firm of W. H. Moore, Adams & Co., at the sum of $8,000, and upon the retirement of the said Charles W. Adams from the said firm, on the first day of July, 1867, his entire interest was purchased in the firm of W. H. Moore, Adams & Co., by W'm H. Moore & Co. for the sum of fourteen thousand dollars.

Said respondent and the said William C. Mitchell would further state that by reference to Exhibit A, filed herein, on the 24th day of
157 March, 1869, it will be seen that the firm of N. Webb & Co. was in debt to the amount of $61,462.61, and that there was due and owing said firm the sum of $76,105.03, which sum, if it could have been collected, would have paid all the debts and left a surplus profit; but said respondent states that after the sale of all the goods on hand at the death of the said N. Webb, in the best market to be found, and for the best price that could be obtained, said goods only brought the sum of $28,982.06, which sum was paid over to W'm H. Moore & Co., in liquidation of a part of the indebtedness of N. Webb & Co. to W. H. Moore & Co., for goods, wares, and merchandize furnished said N. Webb & Co. to do business upon by the said W. H. Moore & Co.

This respondent would further state that since the filing of his amended answer herein, on the 24th day of March, 1869, in which it is stated that about 20,000$ had been received for sale of goods, the further sum of $8,982.06 *cents* has been received on account of sale of all the remain-

ing goods of N. Webb & Co., sent to Arizona, and the further sum of $1,811.00 has been received on account of collections made
158 of debts due N. Webb & Co., since last court, making in all collected and received since the death of N. Webb, the sum of $30,793, all of which will appear by the books, to be placed to the credit of N. Webb & Co. on the books of W. H. Moore & Co., in payment of a part of the debt due them.

This respondent further states that there is still due to the said W'm H. Moore & Co., from N. Webb & Co., the sum of $35,019.70, as shown by the books; and all the available assets which have come to the hands of the said respondent and the said William C. Mitchell, as surviving partners of the firm of N. Webb & Co., have been collected and used in the payment of the debts of said N. Webb & Co.

This respondent further states that the uncollected debts of the firm of N. Webb & Co., as set fourth in said Exhibit A, are for the most part entirely worthless, disputed, and in litigation; and the said respondent, from the best information and belief on the subject, does not hope to be able in the future to collect over three thousand dollars of the amount of said debts.

159 This respondent, as a specimen of said debts, files the account of Nathan Webb, deceased, with N. Webb & Co. for the sum of $23,130.59, marked as Exhibit D herein; also the account of Gertrude E. Webb (said complainant) for the sum of $5,211.98 *cents*, marked as Exhibit E herein; also, the account of Joab Houghton, brother-in-law and temporary administrator, in the sum of $3,208.45, marked as Exhibit F herein. This respondent, as a further evidence of the worthlessness of said accounts, calls the attention of the court to the expense-account set fourth in Exhibit A, amounting to $15,311.81; the train-account, of $4,571.66; and the account of A. G. Gage for $1,289.29, who is dead, and his estate utterly insolvent and worthless.

The said respondent further states that the actual unpaid indebtedness of the firm of N. Webb & Co. is $35,019.70, and said amount is due the firm of W'm H. Moore and Company, making the loss on the business of N. Webb & Co., the sum of $35,019.70.

The said respondent would further state that said Nathan Webb, deceased, as a partner in the firm of N. Webb & Co., is responsible
160 for one-third said loss of $35,019.70, and one-third of said loss, amounting to the sum of $11,673.23. The said estate of the said Nathan Webb is indebted to the said William H. Moore and William C. Mitchell as the surviving partners of the firm of W. H. Moore & Co., and for said sum the said respondent and the said W'm C. Mitchell ask that the said administratrix of said Nathan Webb, deceased, be decreed to pay the said respondent and the said William C. Mitchell, as surviving partners of the firm of N. Webb & Co., to enable them to pay off and liquidate the said indebtedness of said firm of N. Webb & Co. to the firm of W'm H. Moore & Co.

This respondent, by way of explanation of Exhibit C, filed with the bill of said complainant, under date of June 15th, 1863, would state to the court that at the time that balance-sheet was made, the only available means of said firm of W'm H. Moore & Co., was goods of the value of $25,000; cash on hand, $7,647.21; $21,063.12 due on the pet'y ledger, and $177,011.77 due said firm on its books, making, in all, the sum
161 of $230,722.10; and out of their means the indebtedness of said firm, amounting to $122,808.02, had to be paid, which only left in the hands of said firm of W'm H. Moore & Co., the sum of $107,914.08, for

business operations, and that not in money but unpaid debts, much of which amount remains still unpaid.

This respondent would further state that, in estimating the capital stock of said firm in June, 1863, at $191,513.09, there was included in said estimate $$16,044.47, due the old firm of Moore & Mitchell, and the $177,011.77 of unpaid debts due to said firm of W'm H. Moore & Co. were estimated as good, and those amounts, together with $7,047.21 cash, and $113,617.66, estimated profits, but not real profits, constituted the entire means of said company, amounting to $314,321.11 *cents*, from which was deducted the debts due and owing by said firm, amounting to the sum of $113,617.66, and it left the apparent balance of a capital stock of $191,513.09, but from this amount had to be deducted the said sum of $16,044.47 due the old firm, and such sums of the debts due to said firm of W. H. Moore & Co, as could not be collected, which
162 this respondent avers was a large amount, that was not and could not be collected.

This respondent would further state that, upon closing the books of W. H. Moore & Co., on the 2nd day of July, 1866, and the opening the books at the same time of W. H. Moore, Adams & Co., a large amount of the debts which appear to have been collected by Exhibit B, filed herein on the 24th of March, 1869, were not in fact collected, but only transferred from the books of W'm H. Moore & Co. to the books of W'm H. Moore, Adams & Co., and many of said debts are still unpaid and uncollected.

This respondent would further state that the said Nathan Webb in his life-time, in addition to the $23,130.59 *cents*, by him drawn out of the business of N. Webb & Co. for his own private use and benefit, he, the said Nathan Webb, between the 6th day of September, 1866, and the 30th day of October, 1867, drew out of the firm of W. H. Moore, Adams & Co. the sum of $965.80, and between the 5th day of June, 1861, and the 1st day of May, 1867, the said Nathan Webb drew out of the firm of W. H. Moore & Co. the further sum of $3,716.61, and
163 making, in all, the sum of $4,682.41, as will more fully appear by reference to a copy of said accounts hereby made a part of this answer, and marked as Exhibit G herein.

This respondent would further state that, of the train of wagons and mules on hand 24th March, 1869, when the amended answer was filed, there now remains only one hundred and two mules, and all the residue have been stolen by the Cheyenne Indians, or lost by accident or disease, and three of the wagons, after the loss of the mules at Sheridan, were sold for $150 each, making 450$.

This respondent would further state that, by reference to Exhibit B, filed herein at the last term of court, it will be seen that debts of the firm of W. H. Moore & Company had been collected, amounting to the sum of $29,292.89; and that W'm H. Moore and Company had paid out in liquidation of debts *of* the firm of W. H. Moore & Co. were owing, the sum of $190,361.08 *cents*.

This respondent would further state that it will be seen by reference to Exhibit C, filed herein at last court that the debts due the firm of W'm H. Moore & Company at the death of Nathan Webb amounted
164 to the sum of $322,958.77, and since said last term of court W'm H. Moore & Co. have collected the further sum of $15,528.90, leaving still debts due and to be collected the sum of $307,429.87, out of which amount, when collected, is to be paid the sum of $54,095.14 *cents*, yet due and owing by W'm H. Moore & Co., as appears by Exhibit C, filed herein at last court, which, when all the debts are paid of W'm H. Moore, & Co.,

would leave debts due and owing to W. H. Moore & Co. the sum of $253,324.73, and to this amount must be added train of wagons and mules worth about 25,000$, and the half-interest of W. H. Moore & Co. in the mill-property worth $7,500, which makes, in all, the sum of $285,834.73.

This respondent would further state that of said indebtedness to said firm of W'm H. Moore & Co. of $307,429.87, there is owing by insolvent, absent, and dead parties, which cannot be collected, at the lowest estimate, the sum of $100,000, which amount deducted from $285,834.73 would leave as the probable net profits of the business of W'm H. Moore & Co., from the time Nathan Webb entered said firm until
165 his death, the sum of $185,834.73, and would, when turned into cash, give the said Nathan Webb's representatives and legal heirs the sum of $23,229.34, as his portion of the profits in said business, subject to be slightly increased or diminished, in proportion to the success of W'm H. Moore and William C. Mitchell, surviving partners of the firm of W. H. Moore & Co. in the future collections of the debts due said firm, estimated to be worthless.

This respondent would further state that since the death of the said Nathan Webb, the said complainant has drawn out and received from the firm of N. Webb & Co. the sum of $5,211.98, as appears by copy of her account hereby made on an exhibit herein, marked E, and has been paid by the said William H. Moore and William C. Mitchell, as surviving partners of the firm of W. H. Moore & Co. the further sum of $11,441.00, making in all, paid to the said complainant, the sum of $16,652.98, and a copy of the said accounts *are* hereby filed, marked as Exhibit H herein.

This respondent would further state that the machinery for a
166 steam mill belonging to N. Webb & Co. and unsold 24th of March, 1869, when the amended answer was filed, has since been sold for the sum of $2,000, and the amount included in the cash receipts credited above, since last court.

This respondent would further state that, at the last term of this court, in the amended answer of this respondent, the court was informed of the fact that Sarah Webb, the mother of said Nathan Webb, deceased, was living, interested in the settlement of said estate of her deceased son, Nathan Webb, and a necessary party in this case, and this respondent now states that said Sarah Webb is a resident of Burlington, in the State of Iowa, and said respondent now again asks that said Sarah Webb be made a party to this suit, and required to answer herein, or disclaim all interest in, or claim to any portion of the estate of her deceased son, Nathan Webb.

This respondent would further state that, at the time said Nathan Webb was admitted into said firm as a partner, with an eighth inter-
167 est, the said William H. Moore was the regularly-appointed sutler at said post of Fort Union, and had the exclusive right to trade at that post; and the admission of the said Nathan Webb into partnership as aforesaid, was not because of his capital or business habits, but as an act of favor to a former clerk in the employ of the said respondent to whom he was much attached. This respondent further states that the facts set fourth in the foregoing answer and exhibits are taken from the books of said firm of N. Webb & Co. and W'm H. Moore & Co., and are as full, and as explicit, and certain as the unsettled condition of the business will enable the best and most careful book-keeper to make them.

This respondent would further state that the books of N. Webb and

Company are at all times open to the fullest inspection of the said complainant, her attorn*ies*, or any suitable and competent agent selected by the complainant at any and all times. The said respondent would further state that the books of W. H. Moore & Co., & W. H. Moore, Adams & Co., are in daily use at their store-house at Fort Union, and cannot, without great inconvenience and detriment, be spared
168 from the office, but are freely open to the inspection of the complainant, her attorn*ies*, or a competent bookkeeper and accountant, at all times when not in actual use.

The said respondent having fully answered all the material allegations in said complainant's bill and supplemental bill, upon a final hearing of this case asks that said bill be dismissed for want of equity, and that the said respondent receive of said complainant his costs and charges in this behalf laid out and expended. All of which is respectfully submitted to the court.

WILLIAM H. MOORE,
By CLEVER & WATTS, *Att'ys.*

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

William H. Moore, upon his oath, states that the matters and things set fo*u*rth, stated, and contained in the above answer, so far as stated from his own knowledge, are true in substance and in fact, and so far as stated from the information of others, he believes them to be true.

W. H. MOORE.

Subscribed and sworn to before me this 18th day of August, 1869.
J. G. PALEN, *C. J. & C.*

169 On which said answer is the following endorsement, to wit:

Gertrude E. Webb vs. W. H. Moore et al. Chancery. Seperate amended answer of W. H. Moore. Filed in my office this 18th day of August, 1869. W'm Breeden, clerk.

EXHIBIT D.

N. Webb in account with N. Webb & Co.

1863.			
April	11.	To pants & vest	7 50
		" boots, 4.70; cash, 37.00	41 70
	16.	" 1 p'r boots	3 75
	22.	" cash paid Kaufman	4 50
	23.	" cash	157 20
	29.	" am't rec'd of Capt. Enos	30 00
May	3.	" cash	3 75
	16.	" 1 p'r shoes	3 12
	18.	" 1 hat	4 00
June	4.	" am't paid for washing	4 00
July	17.	" 1 w'board, 63; 1 box candy, 62	1 25
	20.	" ½ lb. starch, 13; am't paid wash'woman, 2.00	2 13
		" 1 p'r shoes p'r Lavuno	1 50
		" 5 lbs. starch, 1.25; 1 rack-comb, 50	1 75
	23.	" 6 bot's ess. of J. ginger	2 25
		" cash paid Mex	50
170		" 16 y'ds muslin, 3*s*	6 00

		" 6 " cambric, 1s	75
		" curtain calico	6 00
		" am't paid Mex., for moving	50
	26.	" cash paid for vinigar	63
		" 1 soup-tureen	2 50
		" ½ doz. oysters	6 00
		" " " S. plates	75
		" cash for 44 y'ds Jerga	33 00
	28.	" 1 lb. tea, 1.50; 2 mackerel, 37	1 87
	31.	" 1 load wood, 4.00; 2 doz. eggs, 75	4 75
		" 4 lbs. sugar, 1.00; tumblers, 75	1 75
		" 2 coal lamps	4 00
		" 1 tin bucket	75
1863.		Am't forward	351 15
July	31.	To cash paid for cow	80 00
		" 5 chairs, 15.00; 1 table, 5.00	20 00
Aug't	1.	" cash, 50; 1 lb. crackers, 30	80
		" 1 p'r shoes, 1.19; 1 bu. knife, 75	1 94
		" 1 pa. cocoa	37
		" 1 bot. wine, 1.25; eggs, 75; bay-rum, 75	2 75
	4.	" 3 mackirel, 75; 1 can oysters, 1.00	1 75
		" 1 bot. S. wine, 1.25; 1 can chicken, 1.25	2 50
		" cash, workman for fixing house	3 75
		" " for carpet	16 00
		" " " workman fixing house	5 00
	7.	" 2 doz. eggs	75
		" am't paid for fixing watch	2 00
		" cash for 50 y'ds Jerga	37 50
171		" cash paid commissary	3 30
	10.	" 5 lbs. sugar, 1.50; 1 bot. picalilli, 75	2 25
		" 1 bot. W. sauce, 50; 3 doz. eggs, 1.13	1 63
		" 1 can oysters, 1.00; 1 ornament & match-safe, 75	1 75
		" 1 coat of H. J. Cuniffe	25 00
	13.	" 19 y'ds Jerga	14 25
		" 1 box tooth-powder	31
		" 2 mackerel	50
		" am't paid Mex	3 00
		" cash	16 50
	15.	" " for 1 load fodder	10 00
		" 6 cans oysters, 6.00; 3 doz. eggs, 1.12	7 12
		" 1 tooth-brush, 75; 3 doz. eggs, 1.13	1 88
		" 1½ y'ds lawn	1 12
		" cash, 2.00; 10 lbs. sugar, 3.00	5 00
		" 1 tin pan	38
	17.	" am't paid Mexican	2 25
		" 10 chickens	3 37
		" 2½ y'ds muslin for José	1 13
		" fish	25
1863.		Am't forward	627 25
Aug't	21.	To 1 chamber, 1.25; 1 dipper, 12	1 37
		" 50 lbs. sugar	15 00
	22.	" 1 box Y. powder	25
		" 1 p'c. oil-cloth	2 50
		" cash paid order to woman	16 00

	25.	" perfumery, 1.00; 1 can salmon, 1.25	2 25
		" 13 lbs. ham, 2.86; 1 p'c. diaper, 4.00	6 86
		" 1 doz. towels, 4.90; 1 p'c. lienza, 20.12	25 02
172		" 1 can lard	13 00
	26.	" cash for cow	70 00
		" cash	5 00
		" 2 lbs. candles, 70; 2 bed-quilts, 7.00	7 70
		" 1 bot. cologne	1 40
		" 1 wash-basin	45
	27.	" cash	5 00
		" 1 bot. jelly, 1.00; ½ doz. ½-hose, 2.50	3 50
		" 4 lbs. sugar, 1.50; 3 doz. eggs, 1.13	2 63
		" 1 tin bucket, 75; 3 y'ds V. ribbon, 2.52	3 27
		" 1 parasol, 10.50; 1 p'r boots, 10.00	20 50
	28.	" 1 bot. extract	25
	29.	" nutmeg, 12; 5 bot's wine, 5.63	5 75
Sept.	1.	" 1 soup-turreen, 2.00; 1 bed-cord, 25	2 25
		" 2 mackerel, 50; 5 y'ds lace, 1.26; 1 doz, Kath'i'on, 2.50	4 25
	2.	" ½ doz. hose, 1.75; 1 bot. O. oil, 50	2 25
		" 1 hat, 3.00; 1 doz. eggs, 37	3 37
		" 3¼ lbs. coffee, 2.19; cash, 2.50	4 69
		" T. brush, 50; 3 y'ds muslin, 1.00	1 50
	3.	" cash paid Shultz & Bro	123 46
		" cash for corn	20 00
	4.	" 1 mackerel, 25; 1 box Y. powder, 25	50
		" 3 cans oysters	3 00
		" cash, 10.00; 1 blanket of H. J. C., 35.00	45 00
	5.	" am't paid com'y bill	7 60
		" 2½ doz. eggs, 93; 12 lbs. ham, 3.36	4 29
1863.		Am't forward	1,057 11
Sept.	5.	To 1 p'r pants, 9.80; 1 coat, 16.80; 2 vests, 6.30	32 90
		" 1 mackerel, 25; 2 lbs. candles, 75	1 00
173	8.	To spice, 25; 1 bot. sarsaparilla, 1.00; 10 lbs. sugar, 3.00	4 25
	9.	" 1 chicken, 37; ¼ lb. nutmeg, 38; 5½ lbs. coffee, 3.44	4 19
		" am't paid Gen'l West	80 25
	10.	" 2 doz. eggs, 75; 1 q'r. letter-paper, 25	1 00
	11.	" 1 bot. sherry wine, 1.25; 2 pa. pepper	1 50
		" 1 can salmon, 1.25; 14 y'ds x-Swiss, 4.34	5 59
	12.	" me'd'se. per Delavina	41 63
		" cash	5 00
	14.	" 1 bot. M. wine, 1.00; 1 mackerel	1 25
		" 5 yds. mauta	1 87
		" confectionaries	2 00
	15.	" 5 doz. eggs, 1.87; 1 box Y. powder, 25; blacking, 13	2 25
	17.	" cash	17 00
	18.	" 10 lbs. sugar, 3.00; cash, 10.00	13 00
	19.	" 5 doz. eggs, 1 87; 1 bot. jelly, 50	2 37
	21.	" 15 lbs. soap, 3.75; 9 lbs. sugar, 2.70	6 45
		" am't paid Mex. for work	1 50
		" 10 yds. denims, 7.00; thread, 13	7 13
	22.	" 9 yds. callico, 3.37; 6 yds. lienza, 2.00	5 37

		" 4 p'r child's hose, 1.00, 1 p'r child's shoes, 91	1 91
		" 4 yds. manta, 1.50; 1 broom, 75; 10 lbs. ham, 2.50	4 75
	23.	" cash, 15.00; do., 3.00	18 00
	24.	" buttons, 25; cash, 25	50
	"	" 4 doz. eggs, 1.50; necktie, 62	2 12
	"	" 1 suit clothes, 28.00; 1 p'r elastic shoes, 3.15	31 15
	25.	" cash	5 00
	26.	" ½ lb. vermicelli, 37; ½ lb. macaroni, 38	75
		" 1 box g'powder, 37; 2 lbs. candles, 75	1 12
1863.		Am't forward	1,359 91

174

Sept.	28.	To 1 mackerel, 25; ½ doz. cups, 75	1 00
		" hooks & eyes, 12; 5 doz. eggs, 1.88	2 00
		" 1 bot. vanil'a, 25; cash, 35.94	36 19
	30.	" am't paid rep'g door	4 00
Oct.	1.	" 7½ lbs. coffee	4 68
	2.	" 7 lbs. pul. sugar	1 89
	3.	" cash, 12.00; do., 10.00	22 00
	4.	" 2½ doz. eggs	94
	5.	" 10 lbs. sugar, 2.50; mackerel, 25	2 75
	6.	" 5 doz. eggs	1 87
	7.	" cash	8 00
		" alapaca, 1.75; ribbon, 37; 1 lb. candles, 30	2 42
	9.	" cash	6 00
	10.	" 4 doz. eggs, 1.50; 1 can oysters, 1.00	2 50
		" 1 box yeast-powders	25
	13.	" 1 box salmon, 1.25; 2 lbs. candles	2 00
		" cash	14 00
	14.	" 5 doz. eggs, 1.87; matches, 13	2 00
		" cash paid Mexican	9 00
		" 1 bot. wine, 1.25; 1 lb. vermicelli, 37	1 62
		" 1 p'r shoes for José	1 50
	15.	" cash paid for wood	6 00
		" 8¼ lbs. sugar	3 10
	17.	" 1 chicken, 37; 2 doz. oysters, 20.40	20 77
	19.	" 2 lbs. crackers, 75; 2 chickens, 75; cash, 8.00	9 50
		" 2 doz. eggs	75
	20.	" cash	100 00
	22.	" am't paid Mexican, 2.25; 1 can salmon, 1.00	3 25

175

Oct.	22.	To chickens, 62; 2 lbs. candles, 75	1 37
		" 1 box Y. powders	38
1863.		Am't forward	1,631 64
Oct.	23.	" am't used on trip to Union	200 00
		" 2 doz. eggs, 75; 2 y'ds plaid, 1.00	1 75
	24.	" 4 lbs. sugar, 1.25; 1 bot. vanila, 25	1 50
		" 1 bot. ex. lemon, 25; 6 doz. eggs, 2.25	2 50
		" 1 trunk	6 50
	26.	" cash, 4.00; 1 bot. jelly, 75	4 75
		" am't for Ge'l Palmer's ac	130 00
	28.	" cash	6 00
		" 2 papers pepper, 25; ¾ y'ds delain', 50	75

	30.	" cash, 9.00; 15 lbs. ham 3.75	12	75
		" 14 y'ds cal'ico, 3.90; 12 y'ds dress-goods, 6.75	10	65
		" 4 y'ds cambric, 1.40; 2 lbs. candles, 75	2	15
		" 4 doz. eggs	1	50
	31.	" 2 chickens		75
		" cash p'd com's'y	8	87
Nov.	1.	" 6 lbs. sugar	1	50
	3.	" 2 chickens, 75; 2 doz. eggs, 75	1	50
	6.	" 8¼ lbs. sugar, 2.55; 4 doz. eggs, 1.50	4	05
		" 1 box Y powder, 25; mending pin, 70		95
		" cash paid wash'woman	12	00
		" 1 chicken, 37; 2 lbs. candles, 63	1	00
		" fixing clock	1	00
	9.	" cash	15	00
	10.	" eggs, 1.88; trimmings, 75; paid barber, 50	3	13
	11.	" 8 lbs. coffee, 5.00; 1 bot. S. syrup, 50	5	50
	12.	" cash paid Cuniffe	7	50
176	14.	To 2 lbs. rice		50
	17.	" 5¾ lbs. starch, 1.44; 1 chicken, 37	1	81
	18.	" 6 doz. eggs, 2.25; 2 lbs. candles, 75	3	00
	19.	1 box Y. powder, 37; 1 bot. jelly, 63; 1 chicken, 37	1	37
	20.	1 squash		25
	22.	1 chicken, 37; 8½ lbs. pul. sugar, 2.13	2	50
		" 6 lbs. sugar, 1.50; 1 bot. extracts, 25; 2 doz. eggs, 75	2	50
		" 1 box pills, 25; 2 doz. eggs, 75; 1 chicken, 38	1	38
	1863.	Am't forward	2,088	50
Nov.	24.	To 1 bot. whiskey, by Glasby	1	50
		" 1 p'r shoes	3	85
	25.	" 2 chickens, 75; 8½ lbs. ham, 2.12; 3 doz. eggs, 1.13	4	00
	28.	" 6 lbs. rice, 1.50; 1 mackerel, 75; 2 lbs. crackers, 50	2	75
	30.	" cash, 34.00; 1 box Y. powders, 37	34	37
		" 1 mackerel, 25; 1 chicken, 38		63
Dec.	1.	" cash paid com's'y bill	5	50
		" am't paid Gen'l Palmer ac	29	55
		" 2 cakes chocolate		50
		" 1 chicken, 37; apples, 25		62
		" 1 table-cover, 6.00; 1 p'r scissors, 50	6	50
		" 1 bot. S. oil, 75; 1 penknife, 2.25	3	00
	3.	" 1 doz. spool thread	1	00
		" cash	12	00
	5.	" gloves		63
	7.	" 2 doz. eggs, 75; 2 papers pepper	1	00
	8.	" cash	5	00
	9.	" cash, 6.50; 2 chickens, 75	7	25
		" 1 box Y. powders, 37; 1 box jelly, 63	1	00
177		To 1 coffee mill, 75; 2 doz. eggs, 75	1	50
		" 1 bot. picalilli, 50; 1 bot. W. sauce	1	00
		" fodder, 3.50; 6 B. plates, 1.50	5	00
		" 6 lbs. sugar, 1.50; delain, 3.00; shoes, 1.75	6	25
	11.	" cash, 15.00; tomatoes, 75; chickens, 75	16	50
		" ¼ box raisins, 1.90; 1 lb. almonds, 37	2	27
	12.	" cash, 2.25; 1 table-cloth, 4.00	6	25

		" napkins, 4.00; 7 lbs. sugar, 1.75	5 75
		" 1 can tomatoes, 75; 2 chickens, 75	1 50
		" cash, 60.00; 3 chickens, 1.13	61 13
		" am't paid A. Constante	8 00
		" cash paid for wood	36 00
	15.	" 8½ lbs. ham, 2.12; 7½ lbs. coffee, 4.69	6 81
		" 1 can tomatoes	75
	16.	" 1 door-lock, 75; cash, 25	1 00
1863.		Am't forward	2,369 06
Dec.	17.	To 33 lbs. lard, 8.58; 2 lbs. candles, 75	9 33
		" cash for eggs	2 00
	18.	" 1 box Y. powders, 37; 1 lb. macaroni, 38	75
		" 1 p'r child's shoes, 1.00; 4 p'rs child' stocking, 75	1 75
	22.	" 1 can tomatoes, 75; 1 q't coal oil, 38	1 13
	23.	" 1 bot. jelly, 75; 1 bot. extract, 25	1 00
	25.	" 26 lbs. sugar, 7.80; 1 can tomatoes	8 55
		" 2 lbs. almonds	75
	28.	" cash, 7.00; 1 can tomatoes, 75	7 75
		" 1 bot. extract, 25; 1 mackerel, 25	50
	29.	" 3 lbs. candles, 1.12; 1½ doz. eggs, 56	1 68
		" 1 mackerel	25
	31.	" cash, 200.00; one stew-pan, 50	200 50
178		To 1 can tomatoes, 75; 2 lbs. rice, 50	1 25
1864.			
Jan'y	1.	To cash	2 00
	2.	" 1 can tomatoes, 75; needles, &c., 50	1 25
		" cash, 3.50; 7 lbs. pul. sugar, 1.75	5 25
		" 1 oz. nutmegs, 13; 1 lock, 87	1 00
	5.	" cash paid com's'y ac	7 80
		" 3 doz. eggs, 1.12; 1 box Y. powders, 38	1 50
		" 1 q't coal-oil, 50; 1 mackerel 25	75
		" 1 chicken, 37; fixing sursingle, 2.00	2 37
		" 1 y'd crash, 18; 8 y'ds calico, 2.80	2 98
		" 1 doz. hose, 4.00; 1 shawl, 7.00	11 00
	8.	" cash, 12.50; 1 can tomatoes, 75	13 25
		" 1 pap. pepper, 12½; 9 lbs. ham, 2.37; 3 doz. eggs, 1.13	3 62
	9.	" 1 mackerel, 25; 2 lbs. candles, 75	1 00
	11.	" 1 can tomatoes, 75; 1 bot. catsup, 25	1 00
		" 20 lbs. coffee, 12.50; 1 mackerel, 25	12 75
	13.	" 1 can tomatoes, 75; 3 ya's alapaca, 7.12	7 87
1864.		Am't forward	2,681 64
Jan'y	13.	To me'd's, 50; 2 doz. eggs, 75	1 25
	15.	" am't paid Juan Zubrian	21 25
	16.	" 6 lbs. sugar, 1.50; 1 chicken, 37	1 87
		" 1 can tomatoes, 75; 3 doz. eggs, 1.13	1 88
	18.	" fixing chairs, 25; 1 can tomatoes, 75	1 00
		" 1 lb. macaroni, 37; 2 lbs. candles, 63; 1 box Y. powder, 25	1 25
	22.	" 1 doz. eggs, 50; 1 q't coal-oil, 50	1 00
		" 1 lb. raisins, 37; 1 chicken, 38	75
		" 1 lamp chimney, 25; 2½ doz. eggs, 94	1 19

179

Jan'y	22.	To me'd's, 1.50; nutmegs, 25; 1 bot. ess. lemon, 13	1 88
	23.	" 1 chicken, 37; 1 can tomatoes, 75	1 12
		" 2 doz. eggs, 75; 6 lbs. sugar, 1.80	2 55
		" 1 bot. jelly, 50; 1 mackerel, 25	75
	25.	" am't paid for peaches & fodder	8 35
		" 2 doz. eggs	75
	26.	" 1 lb. candles, 37; 2 doz. eggs, 1.00	1 37
		" 1 can tomatoes, 75; onion, 40	1 15
	28.	" ¼ doz. soup, 50; 1 cravat, 38	88
	29.	1 can tomatoes, 75; 2 doz. eggs, 75	1 50
		" 9 lbs. sugar, 2.25; 1 box yeast-powder; 37	2 62
	30.	" 3 lbs. candles, 1.12; 2 doz. eggs, 75	1 87
		" 1 can peas, 50; 1 can tomatoes, 75	1 25
		" cash paid for wood	19 50
Feb'y	1.	" 2 chickens, 75; 1 doz. eggs, 37	1 12
		" 1 can peas, 50; 2 oz. cloves, 13	63
		" 1 pa. alspice, 12; 14 yd's cal/ico, 4.90	5 02
	3.	" 12 y'ds gingham, 5.40; 3 y'ds manta, 1.50	6 90
		" com's'y bill, 6.24; coal-oil, 50; 3 lbs. candles, 1.13	7 87
	6.	" 3 doz. eggs, 1.12; 10 lbs. sugar, 2.50; 8 lbs. pul. do 2.00	5 62
		" cash	250 00
		Am't forward	3,035 78
Feb'y	6.	To 1 cloth coat, 17.00; 1 p'r pants, 7.75	24 75
		" 1 p'r shoes, 3.25; 1 p'r suspenders, 1.00	4 25
		" 1 can tomatoes, 75; 1 box Y. powders, 37	1 12
		" 1 mackerel, 25; 6 lbs. soap. 1.50	1 75
	8.	" 3 doz. eggs, 1.12; 1 chicken, 38	1 50
	11.	" 1 can tomatoes, 75; 1 bot. ess. lemon, 25	1 00
		" 3 doz. eggs, 1.12; 2 lbs. candy, 50	1 62
180		To 2 chickens	75
	12.	" cash	60 00
	13.	" 1 broom, 75; 1 pa. pepper, 12	87
		" 1 box Y. powder, 38; cash, 2.00	2 38
		" 2 lbs candles, 75; 1 p'r shoes, 1.75	2 50
		" cash paid butcher	24 62
	16.	" 1 can tomatoes	75
	17.	" cash for fodder	3 50
	18.	" " " "	12 00
		" cash 25; mackerel, 25; p'r gaiters, 5.25	5 75
	19.	" 2 lbs. candles, 50; 1 y'd muslin, 38	88
	20.	" 1 can tomatoes, 75; 4 lbs. sugar, 1.00	1 75
		" 2 y'ds berage, 1.50; 8 lbs. ham, 2.00	3 50
	22.	" 3 doz. eggs	1 12
	23.	" 1 can vegetables, 75; 7½ y'ds cal/ico, 2.62	3 37
	24.	" 1 can tomatoes, 75; nutmegs, 25	1 00
		" 1 bot. ess. lemon, 13; 4 doz. eggs, 1 50	1 63
		" cash, 25; 9 lbs. sugar, 2.25	2 50
	25.	" cash	40 00
	26.	" am't paid Major Blakeney	20 00
		" 1 box mustard, 13; 11 y'ds jaconet, 6.19	6 32
		" 10 lbs. coffee, 6.25; needles & thread, 75	7 00
	27.	" mackerel, 25; eggs, 1.12; 2 lbs. candles, 50	1 87
	29.	" cash	16 00

		" 1 can tomatoes, 75; 1 bot. expectorant, 1.00.	1 75
March	1.	" cash, 25; 6 lbs. sugar, 1.50; 4 doz. eggs, 1.50.	3 25
	3.	" 1 can tomatoes	75
1864.		Am't forward	3,297 58
181			
March	4.	To am't paid com's'y bill	14 23
		" 1 lb. saleratus, 25; 4 lbs. candles, 1.00	1 25
		" eggs, 1.37; 1 can tomatoes, 75	2 12
	6.	" 10 lbs. ham, 2.50; coal-oil, 50; 4 doz. eggs, 1.50	4 50
	7.	" am't paid for 5 sheep-skins	2 50
		" 12 y'ds curtain	4 20
	8.	" 1 can tomatoes	65
	10.	" 4 doz. eggs, 1.50; 6 lbs. sugar, 1.50	3 00
		" 1 can tomatoes, 75; cash, 25	1 00
	11.	" 1 roll binding	25
	12.	" 4 doz. eggs, 1.50; 6 lbs. sugar, 1.50; 1 bot. castor-oil, 25	3 25
	18.	" 4 doz. eggs, 1.50; 1 can oysters, 92	2 42
		" 3 lbs. rice, 90; 1 paper pepper, 25	1 15
		" 1 can tomatoes, 75; 1 bot. opodeldoc, 25	1 00
		" 1 bot. jam, 88; 1 q't coal-oil, 50	1 38
	19.	" 1 can oysters	92
	21.	" am't paid butcher	4 25
		" 5 lbs. starch, 1.40; 1 can tomatoes, 75	2 15
		" cash, 25; whiskey, 75	1 00
	22.	" 4 doz. eggs, 1.50; 1 lb. candles 37; cigars, 2.00.	3 87
	23.	" 5 lbs. sugar	1 25
	25.	" 1 bot. ess. lemon, 13; 6 lbs. sugar, 1.50	1 63
		" 1 can tomatoes, 75; 1 paper tacks, 12	87
		" 3 doz. eggs, 1.12; 2 cans oysters, 1.84	2 96
		" 1 can peaches, 1.00; 1 can damsons, 75	1 75
		" 1 p'r gaiters, 5.25; 1 can corn, 75	6 00
	28.	" 1 can corn, 75; 1 can tomatoes, 75; 1 chicken, 38	1 88
		" 1 box blacking, 12; 1 can oysters, 92	1 04
182		" 2 lbs. candles	75
	29.	To 1 can corn, 75; 1 can peaches, 1.00	1 75
	30.	" 1 can corn, 75; 1 bot. D. jam,	2 00
April	1.	" 2 lbs. coffee, 1.00; 1 q't coal-oil, 50	1 50
	1.	" cash for eggs, 1.50; 2 p'rs slippers, 8.00	9 50
		" 1 can corn, 75; 1 can oysters, 92	1 67
1864.		Amount forward	3,387 32
April	6.	To 1 can oysters, 92; 5 lbs. coffee, 2.50	3 42
	8.	" cash paid Cooper for wood	20 00
		" " " Brown	50 00
	9.	" " " H. J. Cuniffe	16 00
		" am't paid Lieu't Slocum	24 00
		" 1 can tomatoes, 75; 1 vest, 5.60	6 35
		" 1 can corn, 75; oysters, 92; peaches, 75	2 42
	11.	" 3 doz. eggs	1 12
	12.	" cash, 5.00; 1 can corn, 75	5 75
		" 1 can salmon, 1.00; cr. tartar & soda, 25	1 25
	14.	" 2 doz. eggs, 75; paid for mending shoes, 1.00	1 75

	15.	" 1 can corn, 75; 1 can tomatoes, 75	1 50
		" 1 bot. ess. lemon, 25; paid for milk & fish, 1.00	1 25
		" 2 lbs. candles, 50; 1 can oysters, 92	1 42
	17.	" 1 doz eggs, 37; 1 can salmon, 1.00	1 37
		" cash paid for milk	75
	18.	" 4 lbs. rice, 1.00; 1 bot. extract, 12	1 12
	19.	" 1 can tomatoes, 75; eggs, 37; 1 bot. S. syrup, 75	1 87
	21.	" me'd'se	3 00
	22.	" 2 doz. eggs, 75; me'd'se, 3.50	4 25
	23.	" ½ lb. tea	1 00
	25.	" 10 lbs. sugar, 3.50; me'd'se, 3.00	6 50
	27.	" me'd'se	2 25
183			
April	28.	To cash	26 00
	30.	" me'd'se	9 82
May	1.	" do.	2 75
		" am't paid com's'y bill	22 50
		" " " rep'g house	3 00
	3.	" me'd'se	23 37
	4.	" do.	1 25
		Am't forward	3,634 35
1864.			
May	5.	To me'd'se, 1.63; 6, me'd'se, 6.25	7 88
	7.	" me'd'se from slate	6 00
	11.	" me'd'se	4 00
	12.	" do.	7 50
	14.	" do.	2 75
	16.	" do. from slate	2 25
	18.	" do. " "	2 50
	19.	" am't credited Zubrian	875 00
		" me'd'se from slate	3 25
	23.	" " " "	14 00
	24.	" cash paid wash'woman	20 00
		" me'd'se from slate	8 00
		" 1 can lard	14 00
	25.	" me'd'se. from slate	23 25
	26.	" do. " "	2 13
	29.	" 15 lbs. pul. sugar, 3.00; 1 can corn, 75	3 75
		" 2 h'f-cans oysters, 1.25; 44 y'ds lienzo, 6.75	8 00
		" cash, 25; 1 can peaches, 75	1 00
		" 1 can oysters, 63; 1 doz. eggs, 74	1 38
		" 1 lb. candles, 25; 1 pa. ginger, 12; cash, 1.00	1 37
June	1.	" cash, 50; butcher's bill, 11.00; 1 bedspread, 3.50	15 00
184		To 2 h'f-cans oysters, 1.25; wood, 6.00	7 25
		" 1 shawl, 7.00; 2 p'rs shoes, 3.50	10 50
		" 15 y'ds cal/ico, 5.25; 10 y'ds gingham, 4.00	9 25
		" 2 p'rs hose, 50; 2 lbs. sugar, 50; 2 lbs. coffee, 1.00	2 00
		" 2 lbs. candles, 50; ½ lb. smo. tobacco, 25	75
		" cash, 1.00; 5 lbs coffee, 2.50	3 50
		" 2 doz. eggs, 75; cash, 25	1 00
	4.	" am't paid Lieu't Johnston	10 00
		" cash	1 75
		Am't forward	4,703 36

1864.			
June	6.	To cash paid com's'y bill	21 15
		" 2 doz. eggs, 75; cash, 25	1 00
	7.	" cash	1 56
	8.	" 8 p'rs butt-hinges, 1.00; cash, 1.00	2 00
	9.	" cash, 1.25; 5 lbs. sugar, 1.25	2 50
		" 2 pa. pepper, 25; 2 lbs. candles; 50	75
		" cash for raffle, 25.00; 1 can peaches, 75	25 75
	11.	" me'd'se from slate	93 25
	13.	" " " "	1 12
	14.	" " " "	6 00
	15.	" " " "	2 00
		" cash paid washer-woman	20 00
	16.	" am't from slate	63
	17.	" " " "	3 50
	18.	" " " "	50
	20.	" 2 doz. eggs	75
	21.	" am't from slate	4 50
	22.	" cash to Doctor McKee	1,000 00
185		To am't from slate	3 00
	24.	" " " "	3 50
	25.	" cash, 35.00; me'd'se from slate, 12.88	47 88
	28.	" am't from slate, 5.25	5 25
	29.	" " " "	2 00
	30.	" " " "	15 00
July	4.	" " " "	3 50
	5.	" " " "	2 50
	6.	" " " "	12 00
	7.	" " " "	14 25
	8.	" " " "	2 75
		" " com's'y bill	12 66
	9.	" me'd'se from slate	5 75
	12.	" " " "	3 50
	14.	" " " "	3 00
	15.	" " " "	1 63
1864.		Am't forward	6,028 49
July	16.	To cash	50 00
		" am't paid blacksmith	10 25
		" " from slate	4 00
	18.	" " " "	6 00
		" cash to washer-woman	10 00
	20.	" me'd'se from slate, 3.00; cash, 50	3 50
	22.	" " " "	10 00
	"	" " " "	4 00
	26.	" " " "	5 00
	27.	" cash	15 00
	29.	" am't from slate	9 00
	30.	" " " "	2 00
186			
Aug't	1.	To am't paid com's'y bill	15 62
		" " from slate	4 50
	2.	" " " "	11 00
	3.	" " " "	4 75
	4.	" " " "	41 00
	5.	" " " "	3 00

	6.	" " " "		15 75
		" cash		6 00
	8.	" do		50 00
		" 1 can cherries, 75; 1 bot. lemon, 13		88
		" 4 doz. eggs, 1.50; 14 lbs. sugar, 3.50		5 00
		" 12 yds. mozambique, 7.20; 1 can plums, 75		7 95
	9.	" 18 " " 10.62; cash, 1.00; 3 lbs. candles, 75		12 37
	10.	" 3 lbs. coffee, 1.68; 3 lbs. pul. sugar, 63		2 31
	11.	" 4 doz. eggs, 1.50; am't to Homick for safe, 30.00		31 50
		" 1 can green gages		75
	12.	" 1 y'd gingham, 50; 4 doz. eggs, 1.50		2 00
	13.	" me'd'se from slate, 1.20; 2 lbs. coffee, 1.12		2 32
		" 2 bot's ess. lemon, 25; 7 cans oysters, 5.25		5 50
		" 3 lbs. crackers, 33; 2 lbs. candles, 50; 3 boxes sardines, 1.35		2 18
		" 1 overshirt, 3.05; 1 bed-cord, 14		3 19
		" 3 lbs. sugar		57
1864.		" am't forward		6,385 38
Sept.	5.	" 1 lb. candles		40
		" butcher's bill		12 50
		" 1 deck cards, 50; 1 bot. M. wine, 1.00		1 50
	9.	" 1½ doz. eggs		56
	13.	" com's'y bill		20 53
	14.	" whitewashing		2 00
187				
Sept.	17.	To cash, 50; 10 lbs. sugar, 1.90; 5 lbs. rice, 35		2 75
		" 1 can oysters, 1.00; 10 lbs. coffee, 5.00		6 00
	20.	" me'd'se from slate		2 25
	21.	" 1 can salmon		1 00
	23.	" cash		1 00
		" 6 bot's ale		3 50
	27.	" 1 hat, 4.00; cash, 1.75		5 75
		" 3 doz. eggs, 1.12; 1 bot. pickels, 75; cash, 50		2 37
		" 1 q't coal-oil		75
	29.	" 1 can golden syrup		1 50
	30.	" 1 bot. ess. lemon, 25; 1 can lard, 18.90		19 15
		" cash to hospital matron		20 00
Oct.	1.	" cash, 1.25; 9 lbs. p. sugar		4 00
		" 2 shirts for Mac		5 00
		" me'd'se from slate		2 00
	3.	" " " "		18 87
		" com's'y bill		10 62
	5.	" 1 can oysters		1 00
		" butcher's bill		4 50
		" cash		6 62
		" 4 p'r stockings, 2.10; 4 L. C. h'dk'fs, 2.50		4 60
		" 1 p'r gloves, 45; 1 whip-broom, 38		83
	6.	" cash		500 00
	7.	" 3 doz. eggs, 1.12; cash, 1.50		2 62
1864.		" am't forward		7,049 55
Oct.	8.	" error credited W. W. Mills		30 43
	10.	" cash, 1.00; 3 doz. eggs, 1.12		2 12
	16.	" box blacking, 10; cocoa dipper, 30		40

		" cash, 75; 1 tooth-brush, 13		88
188	18.	To cash		1 00
	20.	" do. by Mac		5 00
		" 1 chamber-set, 8.25; cash, 50		8 75
	21.	" cash, fixing house		3 75
	24.	" do.		3 50
	28.	" 8 lbs. coffee, 4.00; 8 lbs. sugar, 2.00		6 00
		" paper pins, 06; 5 yd's ribbon, 62; cash, 2.50		3 18
Nov.	5.	" ½ lb. tea		75
	9.	" com's'y bill		8 06
	12.	" 1 lb. candles, 75; cash, 6.00		6 75
		" ½ lb. mustard, 25; ½ lb. maple-sugar, 35		60
		" ½ lb. rock-candy, 40; 3 cakes soap, 50		90
		" 2 small boxes sardines, 50; 1 can oysters, 1.00		1 50
		" 1 can spice oysters, 50; 1 lb. crackers, 25		75
		" 1 shovel & tongs, 1.50; 1 can cherries, 1.00		2 50
	14.	" cash, 1.75; 2 lbs. candles, 1.50; 1 q't coal-oil, 75		4 00
	15.	" 1 lb. maccaroni, 10; chickens, 75		85
		" 10 lbs. sugar, 4.00; 2 bot's ess. lemon, 50		4 50
		" 1 broom, 75; 1 can plums, 75		1 50
	16.	" cash for chickens, 3.50; 5 lbs. starch, 1.00		4 50
		" 1 bot. M. wine, 1.25; 1 p'r pants, 6.00		7 25
		" 4 spools thread, 50; 1 mackerel, 37		87
	17.	" cash, 1.75; 2 p'rs stockings, 75		2 50
		" 1 can cherries, 1.00; 2 lbs. candles, 1.50		2 50
		" 1 box Y. powder, 37; 2 lbs. candy, 1.00		1 37
		" 1 lb. maple-sugar, 38; 2 boxes figs, 1.20		1 58
1864.		" am't forward		7,167 79
Nov.	19.	" 1 can oysters, 1.00; 1 can corn, 1.00		2 00
189		To nail-brush, 1.50; cash for chickens, 2.25		2 75
		" 6 bars soap, 1.00; 1 can cherries, 1.00		2 00
	21.	" 5 lbs. coffee, 2.80; 5 lbs. pul. sugar, 2.00		4 80
	22.	" 14 y'ds delain', 4.48; 2 lbs. candles, 1.50		5 98
		" 1 box Y. powder, .37; 2 mackerel, .75; 9 chickens, 2.37		3 49
	23.	" 1 can cherries, 1.00; 2 y'ds velvet-ribbon, 75		1 75
	24.	" 4 y'ds trimmings, 1.00; dress-buttons, 25		1 25
		" 1 can peas, 1.00; 1 box herring, 2.00		3 00
		" cash for chickens, 1.50; 2 lbs. candles, 1.50		3 10
	25.	" me'd'se from slate, 1.75; cash, 55.00		56 75
	26.	" " " "		4 25
	27.	" " " "		8 50
	29.	" " " "		1 50
	30.	" " " "		1 75
Dec.	1.	" " " "		9 50
	3.	" " " "		8 00
		" " " "		1 75
	5.	" cash, 2.00; Y. powder, .37; 2 lbs. candles, 1.25		3 62
	6.	" 1 can cherries, 1.00; 10 chickens, 3.13		4 13
	8.	" cash paid Schultz' bill		56 00
	8.	" 1 can cherries, 1.00; 12 y'ds velvet ribbon, 2.64		3 64
		" 2 y'ds alapaca		2 10
		" cash, 57.13; do., 3.00		60 13
	11.	" cash		31 50

		" 15 lbs. sugar, 4.00; cash, .75; 1 doz. eggs, .50.	5	25
		" 4 p'rs child's stocking', 1.00; 1 q't coal-oil, .37.	1	37
	12.	" com's'y bill	13	69
		" 3 lbs. candles	2	00
	13.	" 1 box Y. powder		37
	14.	" 1 " vermicelli, .50; cash for peaches, 1.25..	1	75
190	15.	To 3 lbs. candy, .50; 1 can syrup, .75	1	25
	16.	" cash, 36.00; 1 can oysters, 1.00; 1 can salmon, 1.00	38	00
	19.	" cash paid Capt. Smith	7	00
	20.	" 10½ lbs. sugar, 5.25; cash for peaches, 1.50...	6	75
1864.		Am't forward	7,528	46
Dec.	21.	" cash to Captain Smith	12	00
		" 1 bot. M. wine	1	50
		" me'd'se from slate	6	50
	23.	" 8 lbs. sugar, 3.00; 1 box raisins, 9.00	12	00
		" 4 lbs. rice, 1.00; 2 lbs. candles, 1.00	2	00
		" 1 can syrup, 1.00; 1 box Y. powder, .37	1	37
	24.	" 3 lbs. candy, 1.50; 27th, me'd'se from slate, 7.00	8	50
	28.	" 57 lbs. lard, 14.25; 1 lb. candles, .75	15	00
	30.	" 2 cans plums, 2.00; 31st, me'd'se from slate, 7.50	9	50
1865.				
Jan'y	2.	To 2 papers pepper		25
	3.	" 2 lbs. candles, 5 lbs. starch, 1 bot. W. sauce..	2	50
	4.	" 5 y'ds calico, 1.25; 10 lbs. sugar, 2.50	3	75
	5.	" 2 lbs. vermicelli, 1 can syrup, 2 doz. eggs	2	00
	7.	" me'd'se from slate	1	00
	11.	" cash, 5.00; 1 kit mackerel, 12.50	17	50
	14.	" 2 lbs. candles, 1.00; am't to Mex. woman, 12.00	13	00
	17.	" cash, .80; 9 window-glass, 1.00; cash, 1.60...	3	40
	20.	" cash for pork	2	00
	21.	" 8 lbs. sugar	2	00
	25.	me'd'se from slate	2	00
	28.	16 clothes-hooks		75
	31.	cash, 1.00; 1 box Y. powder, .37	1	37
Feb'y	4.	" cash	25	00
191	9.	To 6 p'rs cot. ½-hose	1	50
	10.	" 1 sack flour, 8.00; 4 y'ds brilliant, 2.50	10	50
	13.	" 1 can golden syrup	1	00
	15.	" cash	1	20
	16.	" 1 box Y. powder		37
	21.	" cash		75
	22.	" do., 4.36; 1 box Y. powder, .38	4	63
	24.	" cash, 5.00; 1 broom, .87; 1 straw hat, 1.88....	7	75
	27.	" 2 doz. hose, 10.00; cash, 11.81	21	81
March	1.	" cash, 85.00; do., 2.80	87	80
	4.	" 1 box Y. powder, 38; cash, 10.00	10	38
1865.		Am't forward	7,821	04
March	7.	To cash, 6.25; 1 lb. hops, .50; bal. on pants, 6.00.	12	75
	10.	" cash sent to States	500	00
		" cash paid express charges	41	25

		" cash, 3.38; 13th, cash, 17.00	20 38
	13.	" 1 bot. W. sauce .50; 4, cash, 8.00	8 50
	15.	" 1 box. Y. powder, .50; 5 bot's ess. lemon, 1.00	1 50
		" cash, .62; 17, cash, 1.50	2 12
	18.	" 1 p'r hoops	2 50
	22.	" cash for vegetables	1 25
		" 10 y'ds gingham, 5.00; cash, 2.00	7 00
	23.	" 2 cans peaches	2 50
	25.	" cash	25 25
		" do	4 87
	27.	" 1 box Y. powders	50
	28.	" cash, 4.50; 1 can peaches, 1.25	5 75
	31.	" 1 can peaches, 1.25; cash, 6.00	7 25
April	1.	" cash paid comis'y bill	30 04
192	3.	To cash paid A. B. Rohman	91 40
	4.	" 12 bars soap, 3.00; 1 can peaches, 1.25	4 25
		" 1 box Y. powder, .50; 5th, 1 " " 1.25	1 75
	7.	" cash	20 00
		" eggs, .62; 4 y'ds bl'd drill, 2.00	2 62
		" 2 cans peaches, 2.50; 6 spools thread, .75	3 25
	10.	" 6 lbs. candles, 4.50; 1 box Y. powder, .50	5 00
	13.	" 1 p'c. ribbon, .50; 2 y'ds ribbon, 1.00	1 50
		" 2½ y'ds bro. linen, 1.25; 1 can peaches, 1.25	2 50
	14.	" cash, 100.00; do., 27.00	127 00
	15.	" 3 lbs. rice, 1.05; 1½ doz. eggs, .75	1 80
	17.	" 1 can peaches, 1.25; 2 doz. eggs, 1.00	2 25
	18.	" 6 cans oysters, 9.00; 1 hat, 6.50	15 50
1865.		Am't forward	8,773 27
April	18.	To cash	3 00
	19.	" 2 cans okra, 2.00; 2 cans corn, 2.00	4 00
		" 2 " peaches, 2.50; 2½ doz. eggs, 1.25	3 75
	21.	" me'd'se	50
	24.	" me'd'se, 5.50; 25th, me'd'se, 3.75; 28th, me'd'se, 4.00	13 25
	28.	" me'd'se, 2.75; 3rd, me'd'se, 2.50	5 25
May	2.	" me'd'se, 1.75; do., 3.75	5 50
	6.	" cash	26 75
	9.	" cash, 30.00; me'd'se, 8.00	38 00
	14.	" me'd'se 8.00; am't to Eaton, 15.00	23 00
		" me'd'se from slate	25 50
	19.	" cash, 3.50; 24, yeast-powder, .50	4 00
	24.	" me'd'se, 18.50; cash, 10.00	28 50
	28.	" cash, 20.00; me'd'se, 6.00	26 00
193			
June	1.	To me'd'se from slate	18 94
	2.	" " " "	18 00
	3.	" " 2.25; cash, 5.00	7 25
	10.	" " 3.50; " 5.00	8 50
	12.	" " 11.75; 13, cash, 5.00; 16, me'd'se, 2.75	19 50
	16.	" cash, 26.00; me'd'se, 75	26 75
July	1.	" " 14.00; 3, cash, 3.75	17 75
	7.	" " 51.50; 8, me'd'se, 35.50	87 00
	11.	" cash for vegitables	19 75
	14.	" cash, 4.75; 15, me'd'se, 1.75	6 50

	17.	" me'dse, 15.00; 19, cash, 10.00; do., 8.00; 20, m'd'se, 1.00	34	00
	20.	" cash paid for herding cows	5	00
	22.	" cash, 6.00; me'd'se, 3.50; 24, cash, 50.00	59	50
		Am't forward	9,325	21
1865.				
July	24.	To me'd'se	13	00
Aug.	1.	" me'd'se, 12.00; 2, cash, 10.00	22	00
	4.	" me'd'se from slate	40	00
		" cash, 17.38; 7th, me'd'se, 1.25	18	63
	11.	" cash	3	50
		" do	9	00
	14.	" do	15	00
	16.	" do	3	00
	18.	" me'd'se 20.00; cash, 14	34	00
	20.	" cash, 6.25; 21, me'd'se, 5.00; cash, 20.00	31	25
	22.	" cash for fodder	10	00
	24.	" cash, 5.00; 28, cash, 10,00	15	00
Sept.	1.	" cash, 19.50; me'd'se, 58.17	77	67
	4.	" cash, 14.00; me'd'se, 10.00; do., 10.00	34	00
	6.	" me'd'se, 15.50; 7th, me'd'se, 24.60; cash, 25,00	65	10
194	9.	To cash, 10.00; me'd'se, 6.00	16	00
Oct.	14.	" cash	65	00
	16.	" cash	30	50
	28.	" cash	35	75
Nov.	1.	" cash paid Pedro for herding	10	00
	2.	" cash, 5,00; 3, cash, 25.00; 4, cash, 50.00	80	50
	6.	" me'd'se	43	00
Dec.	5.	" cash	150	00
	13.	" cash	28	50
	21.	" cash, 20.00; 22, cash, 5.00	25	00
	28.	" cash	135	00
	30.	" am't paid bill in Mesilla	475	87
1866.				
Jan'y	2.	" cash, 5.00; 6, cash, 3.00; 8, cash, 3.75	11	75
	9.	" cash	17	00
	10.	" your proportion of baile-bill	34	50
		" cash	5	00
	29.	" cash, 4.00, 30, cash, 25.00	29	00
Feb'y	12.	" cash, 20.00; 20, cash, 10.00	30	00
	23.	" cash, 2.50	2	50
		Am't forward	10,941	23
1866.				
Feb'y	26.	To cash, in silver, 47.13; percentage on same, @ 33⅓, 15.71	62	84
	27.	" cash loaned Jack Davis	302	75
		" am't to credit of Eaton	100	00
March	1.	" cash, 4.00; 2, cash, 250.00	254	00
	7.	" cash, silver, to Mr. Creel	36	00
	8.	" cash paid José Garcia	16	00
	17.	" cash	225	00
	26.	" cash	53	00

195

April	6.	To cash	16 25
	11.	" cash	6 50
		" am't Zubrian's bill of furniture	352 00
	16.	" cash	78 12
	19.	" cash	5 25
	28.	" cash	50 00
May	4.	" cash p'd Mr. Rohman	49 06
	16.	" am't of Blanchard's bill for Bonley	112 50
		" " paid freight on same	3 75
		" " to credit of Cuniffe, per bill	92 98
	17.	" cash p'd for vegetables, &c	6 00
	24.	" cash	1,600 00
	26.	" cash	23 00
June	15.	" cash per Cuniffe	1,500 00
	22.	" cash paid for moving furniture	10 00
	30.	" am't Doct. Smith' bill	200 00
		" beef a|c, cr. of French	69 50
Sept.	7.	" cash	50 00
	21.	" 3 knives & forks, 1.13; 4 lbs. coffee, 2.00	3 13
	24.	" cash p'd for wood	4 00
	25.	" " " " milk & eggs	2 50
Oct.	1.	" cash, 7.00; broom, 1.00	8 00
	9.	" cash	102 00
	11.	" cash for vegetables & milk	15 25
	18.	" am't to Lyles	14 00
		Am't forward	16,364 55
1866.			
Oct.	23.	To cash p'd Riley for riding express	50 00
	30.	" cash p'd Cuniffe	280 00
		" " W. B. Amity	100 00
196		" 1 p'r boots to do	10 00
Nov.	21.	" cash paid Doctor Christian	200 00
Dec.	10.	" 4 lbs. nails	2 00
	11.	" am't to cr. of H. Raymond	16 00
		" 8 boxes Y. powder, 2.00; 1 broom, 1.00	3 00
		" buckets, 3.00; soap, 75; dipper, 1.00	4 75
		" cash, 3.25; kettle, 1.20	4 45
	17.	" am't paid Mills for house in Franklin	500 00
		" " to credit of French	175 00
	24.	" 1½ fa. corn	11 25
		" 1 cheese	10 00
		" 33 y'ds carpeting	99 00
1867.			
July	15.	" paid int. revenue tax	257 50
Aug.	2.	" " " " "	63 87
		" am't of me'd'se from memo. book	1,252 02
		" am'ts paid by Rob't Campbell & Co	4,521 80
			23,925 19

CR.

1863.			
Aug.	7.	By jerga returned	16 00
Oct.	12.	" am't ch'g'd Cuniffe & Enos	124 00
Dec.	17.	" 1 doz. thread returned	1 10

1864.				
March 12.	"	cash	370 00	
Oct. 21.	"	am't ch'g'd Old Mac	10 00	
Nov. 14.	"	5 sacks flour	60 00	
	"	bran	10 00	
Dec. 3.	"	2 sacks flour, ch'g'd at mill & p'd for by Co. B	16 00	
8.	"	300 lbs. bran	7 50	
1865.		Am'ts forward	614 60	23,925 19
197				
Dec. 12.	By	cash	30 00	
1866.				
Sept. 22.	"	cash	150 00	794 60
		Balance due N. Webb & Co		23,130 59

On which said account is the following endorsement, to wit:

N. Webb, ac't with N. Webb & Co. $23,130.59. Exhibit D. Filed in my office this 18th day of August, 1869. W'm Breeden, clerk.

Mrs. G. E. Webb in account with N. Webb & Co.

1866.			
Dec. 19.	To	1 hat for servant	4 00
"	"	cash of W. H. M	25 00
21.	"	to your portion of expenses from Fort Union to Fort Bliss	325 00
22.	"	am't Mrs. Houg'ton's note & interest	2,280 00
25.	"	" of Geo. Palmer's a/c	477 95
	"	paid Rosalie for 4½ mo's service	70 00
1867.			
March 8.	"	am't of W. P. Bacon's a/c	227 00
May 4.	"	corn, &c., from Ochoa & Arand	100 00
11.	"	am't Dan'l Barhas' a/c	130 68
14.	"	" Lieut Oliver' a/c	770 10
June 5.	"	M. Aranda	90 00
"	"	A. Hornich	270 12
March 27.	"	cash	270 56
1868.			
Aug. 13.	"	Ellis & Allen for tax-receipt	171 57
		Balance due N. Webb & Co., as per their books	5,211 98

198 On which said account is the following endorsement, to wit:

G. E. Webb' a/c. $5,211.98. Exhibit E. Filed in my office this 18th day of August, 1869. W'm Breeden, clerk.

EXHIBIT F.

Joab Houghton in account with N. Webb & Co.

1865.			
Sept. 1.	To	cash loaned	100 00
Dec. 30.	"	" handed you in Mesilla	300 00

1866.				
Sept.	12.	" " paid on repairs of house		3 00
"	18.	" " " " " " "		18 50
Oct.	20.	" " " carpenter		69 00
"	"	" paints, oils, &c		20 00
"	"	" smoking tobacco, 2.00; w'isk-broom, 75		2 75
"	22.	" 2 bot's of whiskey to Peter		4 00
"	"	" 1 sack sugar, 37.50; 1 can lard, 10.50		48 00
"	"	" 3 lbs. tea, 3.75; 345 f't lumber, 58.65		62 40
"	27.	" 1 box soap		18 00
"	"	" starch, 2.62; needles, 50		3 12
"	"	" cash, Oct 21, '66		2,000 00
"	"	" " " 24, "		200 00
"	"	" " " 29, "		350 00
"	"	" 2 shirts, 3.00; flannel, 1.50; chow-chow, 2.00.		6 50
199				
Nov.	1.	To cash		100 00
	2.	" "		100 00
	"	" pants, 7.00; and pipe 75, to servant		7 75
	"	" hat, 4.00; calico, 4.31		8 31
	21.	" 1 shovel, 3.00; 1 spade, 2.00		5 00
	22.	" cash		120 00
	"	" 3 spools thread		75
	24.	" 5 y'ds delaine, 3.75; 9 h'dk'fs, 6.75		10 50
	30.	" pepper, 50; candy, 37		87
				3,558 45

CR.

1866.			
Oct.	28.	By cash	350 00
		Bal' due N. Webb & Co., as per their books	3,208 45

On which said account is the following endorsement, to wit:

Joab Houghton, in a|c with N. Webb & Co. $3,208.45. Exhibit F. Filed in my office this 18th day of August, 1869. W'm Breeden, clerk.

EXHIBIT G.

Nathan Webb in a|c with W. H. Moore & Co.

1861.			
June	5.	To paid Slemmons, Roberts & Co	24 40
	8.	" cash	40 00
	15.	" 1 hat	2 81
200			
July	10.	To paid C. G. Parker for freight	50 00
"	"	" " J. A. La Rue	84 50
	18.	" me'd'se	1 00
Aug't	2.	" 1 p'r pants, 6.00; tobacco, 75	6 75
	16.	" paid Slemmons, Roberts & Co	8 00
	17.	" amount of L't Pegram in St. Louis	13 50
	25.	" cash	250 00

Sept.	10.	" cotton socks	75
	21.	" cash	103 00
	23.	" 1 p'r drawers	50
	24.	" 1 pocket-knife	2 75
	26.	" 3 p'rs drawers	2 25
Oct.	8.	" cash	75
	10.	" me'd'se	1 00
	23.	" cash	20 00
	26.	" cash paid Johnson by Moore & Reese	2 50
Nov.	11.	" " " in Santa Fé for you by Moore & Reese	15 00
Dec.	24.	" champagne, 45; set hoops, 2.00	47 00
	"	" cash	44 00
	30.	" am't assumed for Dr. Whitlock	60 00
1862.			
Jan'y	3.	" cash paid Dr. Gheselin	10 00
	7.	" p'd stage-fare from Las Vegas	4 00
	"	" cash paid Lieut. Barr	10 00
	10.	" 1 hat	3 50
	20.	" cash	10 00
	25.	" am't assumed for Col. St. Vrain	157 12
Feb'y	11.	" p'd Slemmons, Roberts & Co	5 50
	17.	" 1 p'r drawers	63
1862.		Am't forward	981 21

201

Feb'y	9.	To am't p'd St. Louis for you by Moore & Reese	54 00
March	5.	" cash p'd for washing	36 00
	12.	" me'd'se to Mrs. O'Neil	2 00
	19.	" p'd for repairing watch	3 00
	21.	" cash	3 00
	22.	" am't assumed for Geo. Withers	20 00
	24.	" cash	100 00
	29.	" "	37 00
May	1.	" "	12 50
	13.	" p'd. R. Campbell & Co. by Moore & Reese	210 00
	20.	" " Slemmons, Roberts & Co	3 25
	31.	" cash	50
June	2.	" "	8 00
	5.	" " p'd for clothing	94 50
	"	" am't assumed for Capt. McFerran	20 00
	6.	" " " " Dr. Ghesilen	2 50
July	4.	" me'd'se	2 00
	5.	" candy	1 00
	8.	" neckties, 2.00; hat, 4.50	6 50
	9.	" cash	3 50
	12.	" 12 p'rs socks	3 50
	"	" 3 " drawers	1 88
	14.	" gloves, 62; cigars, 4.00	4 62
	"	" 2 plugs tobacco	50
Aug't	18.	" p'd Slemmons, Roberts & Co	15 00
	21.	" 1 doz. socks	1 75
	"	" 4 p'rs drawers	2 50
	22.	" cash	30 00
	"	" cologne	75
202	25.	To 1 lb. candy	75

	28.	" 4 p'rs drawers	2 50
Sept.	1.	" cash	100 00
	"	" 1 jar pine-apple	2 00
	6.	" 1 p'r pants	6 25
1862.		Am't forward	1,772 46
Sept.	10.	" cash	1 00
	15.	" "	25 00
	"	" me'd'se	10 00
	18.	" cash	10 00
	19.	" "	30 00
	24.	" 3 p'r drawers	3 25
	27.	" p'd Dr. Gray	28 00
Oct.	2.	" 1 hair-brush	1 00
	3.	" 1 gal. whiskey	3 00
	8.	" cash	275 00
	15.	" cigars	6 00
	28.	" p'd freight on box	2 00
	"	" cash of Rob't Campbell & Co	41 10
	"	" " " " " "	200 00
	"	" p'd freight on box	10 00
	30.	" cash	5 00
Nov.	20.	" R. Campbell & Co	60
	29.	" 1 hat, 5.00; extract, 50	5 50
	30.	" 3 cravats	2 50
Dec.	2.	" 1 doz. cot. ½-hose	6 00
	13.	" 10 y'ds muslin	1 25
	17.	" am't assumed for S. L. Pratt	52 50
	22.	" 1 p'r lady's shoes, 1.75; 12 y'ds delaine, 4.50	6 25
203	23.	To 1 doz. corn, 9.00; 1 doz. oysters, 9.00	18 00
	30.	" cash	3 75
1863.	"	" " of Helfentine, by R. Campbell & Co	36 00
Jan'y	3.	" 1 box cigars	10 00
	6.	" cash sent Johnson & Whittmore	53 75
	"	" 4 y'ds jaconet	1 50
	"	" 1 coat	30 00
	9.	" 1 quilt, 10.00; peaches, 1.50; matches, 25; whiskey, 75	12 50
	12.	cash, 10,00; candy, 1.25	11 25
	19.	" 35 y'ds jerga, 13.12; 25 y'ds callico, 3.75	16 87
	"	" 8 y'ds cotton fringe	1 00
1863.		Am't forward	2,762 03
Jan'y	23.	" 3 lbs. candy	1 13
	26.	" 1 carpet	40 00
	"	" 2 knives	6 25
Feb'y	2.	" pants & vest, 19.00; cravat, 1.00	20 00
	5.	" wire	150 00
	11.	" me'd'se to Luz	5 50
	13.	" cash p'd Frank Metzger	8 50
	23.	" me'd'se	13 50
	25.	" am't ac. Las Vegas	7 50
	26.	" soap, 1.13; honey, 3.00	4 13
March	2.	" cheese, 75; pickles, 75	1 50
	4.	" cash	50 00
	"	" paper & envelopes	1 00

	5.	" pomade	5 00
	"	" cash paid express charges on carpet	20 75
	9.	" me'd'se to servant	11 25
April	7.	" 12 y'ds flannel	2 16
204	14.	To cash p'd Lewis & Groshen by R. Campbell & Co	140 00
	"	" " " " W. L. Vandevort	23 00
	"	" " " " Benton J. Hall	150 00
	"	" " " " E. Jaccard & Co	12 00
	17.	" 1 doz. thread	1 00
	20.	" 16 y'ds jaconet	5 44
	21.	" 13 " mull	6 50
	"	" 4 cans fruit	3 00
	"	" 1½ lbs. candy	75
	27.	" 24 y'ds cal/ico	4 56
	29.	" cash paid express charges	4 00
May	7.	" sherry wine	2 50
	9.	" 1 box prunes	63
	1863.	Am't forward	3,315 08
May	14.	" cash paid in St. Louis by R. Campbell & Co	78 29
	15.	" 5 bot's Katharon	1 25
	30.	" 1 p'r woman's slippers	1 50
June	2.	" 1 p'r pants	6 40
	8.	" 2 silk shirts	7 18
	"	" 5 lbs. starch	75
	11.	" me'd'se, per wife	21 43
	20.	" 1 horse of Capt. Corey	175 00
	23.	" brandy, 1.75; sherry wine, 2.00; pine-apples, 2.25	6 00
	"	" crackers, 50; sausage, 88; peppermint, 25; pins, 12	1 75
July	22.	" cash p'd express charges	5 75
Aug.	27.	" " " in St. Louis, by R. Campbell & Co	84 50
	31.	" " " of Stabb & Bro., M'ch 17th	4 00
Oct	15.	" " p'd income-taxes	74 72
Nov.	13.	" " p'd in St. Louis by R. Campbell & Co	214 30
205			
	1864.		
March	18.	To p'd Maggie Clark	40 00
	30.	" " Spugelburg for pictures	28 00
Aug.	29.	" 6 bars soap, 90; 1 lb. starch, 25	1 15
	30.	" oysters, 75; pickles, 50; crackers, 13	1 38
	"	" port wine, 1.00; penknife, 2.50	3 50
	31.	" 1 shawl	7 50
Sept.	1.	" cal/ico, 3.12; thread, 25	3 37
	"	" slippers, 1.00; herring, 1.50	2 50
	3.	" me'd'se	132 25
	23.	" 1 doz. spool thread, 75; 1 hoop-skirt, 1.75	2 50
	26.	" sewing-silk, 38; 1 p'r scissors, 75	1 13
	30.	" 2 p'rs cuffs & collars,	5 00
	"	" 2 combs, 1.00; 2 p'r ladies' hose, 1.75	2 75
Oct.	1.	" 3 y'ds white flannel, 2.25; needles, 30	2 55
	7.	" 1 jacket, 5.00; dress buttons, &c., 4.00	9 00

1864.		Am't forward		4,240 48
Oct.	11.	" 25 cans fruit, &c		27 00
	17.	" 1 bot. cherry pectoral		87
	18.	" 8 y'ds flannel, 6.00; 4 p'rs child's hose, 1.17		7 17
	24.	" cash, 50; me'd'se, 22.25		72 25
1867.				
May	1.	" " p'd Gill & Murphy by Rob't Campbell & Co.		94 00
	"	" " " Maurey & Baner " " " "		170 00
	"	" " " James Porter & Co. " " " "		61 20
	"	" " " S. F. Thayer " " " "		11 00
	"	" " " M. Cronan		14 00
	"	" " " Gill & Murphy		97 00
	"	am't forward		4,794 97

CREDITS.

1861.				
May	31.	By cash	200 00	
206				
May	31.	By cash	50 39	4,794 97
June	21.	" am't assumed against Q. M. D'p't	169 50	
	29.	" cash	130 00	
July	10.	" expense	9 50	
	20.	" E. F. Mezick	80 00	
	"	" S. L. Pratt	35 00	
Nov.	13.	" Q. M. Dep't	3 00	
	15.	" N. M. Macrae	24 00	
1862.				
March	21.	" cash	159 90	
May	13.	" "	163 16	
June	6.	" H. Biernbaume	14 00	
Sept.	22.	" cash	40 00	
				1,078 36
				3,716 61

FORT UNION, *March*, 1869.

N. Webb in account with Moore, Adams & Co.

1866.			
Sept.	6.	To cash paid stage company	176 00
	"	" 1 hat	3 00
	8.	" 1 bot. brandy	1 25
	"	" 1 p'r gloves	90
	13.	" 1 overcoat	36 00
	14.	" cash	300 00
	15.	" " p'd for fruit	5 00
	22.	" "	50 00
	26.	" 15 y'ds alapaca for Mrs. W	15 90
	"	" 12 " callico	3 00
	"	" 4 doz. buttons	1 50
207	26.	To 3 cakes soap	66
		" 1 Isabella skirt	4 69

Nov.	10.	" cash to Mrs. Webb	300 00
	17.	" " paid express charges for Mrs. W.	8 90
	19.	" 12 skeins silk p'r Mrs. W.	1 50
1867.			
Oct.	30.	" amount p'd J. E. Barrow, by R. Campbell & Co., for carpet, bought in 1863	57 00
			965 80

On which said account is the following endorsement, to wit:

Nathan Webb in ac. with W. H. Moore & Co. $3,716.61; 965.80—$4,682.41. Exhibit "G." Filed in my office this 18th day of August, 1869. W'm Breeden, clerk.

EXHIBIT H.

FORT UNION, N. M., *March*, 1869.

Mrs. G. E. Webb in account with W. H. Moore & Co.

1867.					
March	12.	To me'd'se furnished by H. J. Cuniffe,	Dec. 17, 1866.		151 99
	"	" am't receipt to	do.	Jan. 31, 1867.	753 40
	"	" " " " "	do.	Mar. 2, " .	2,100 21
April	9.	" " " "	do.	" 29, " .	343 39
May	9.	" cash of	do.	May 1, " .	698 25
June	6.	" am't her receipt to	do.	" 30, " .	1,102 86
208					
July	5.	To am't paid Rob't Campbell & Co. for me'd'se			28 40
		" cash " express charges on above			3 75
	16.	" am't per receipt to H. J. Cuniff			640 40
Aug.	13.	" " " " "	do.	Aug. 2, '67	333 80
Sept.	14.	" " " " "	do.		379 99
Oct.	9.	" 6 y'ds bl'k silk, 4.00			24 00
		" 2 spools thread			25
	15.	" 1 p'c. cambric, 58 y'ds, 25			14 50
		" 1 bot. cologne			3 00
		" 1 black como			50
		" 1 doz. spool silk			1 50
	16.	" 2 papers pepper			50
		" 20 lbs. lard			7 50
		" 2 sacks table-salt			4 00
		" 30 lbs. sugar			11 25
		" 1 s'ck flour			8 00
	17.	" 1 broom			75
		" 1 washbowl & pitcher			5 00
		" 2 papers soda			1 00
		" 1 tin bucket			2 00
	23.	" cash p'd order to E. F. Mezick			86 90
	28.	" 1 lb. candy			75
		" 13 y'ds crash			6 50
	31.	" am't paid R. H. Franklin by R. Campbell & Co.			10 25
		" " " J. E. Herm			13 50

		" am't forward	6,738	09
Oct.	31.	" am't paid Edwin Dean by R. Campbell & Co	2	10
		" " " R. Campbell & Co	2	55
209				
Nov.	1.	To 1 gross pant. buttons		50
	2.	" cash paid for Jerga & ex. charges	20	00
	13.	" 1 bot. brandy	3	00
	19.	" 2 cloaks, @ 50.00 & 35.00	85	00
		" 1 set cloak trimmings	6	00
		" 1 bot. h'dk'f extract		75
		" 13 metus merino	32	00
		" 1 paper pins		25
		" 1 box hair-pins		25
		" 6 y'ds ribbon	1	50
		" 6 linen h'dk'fs	4	50
	20.	" ½ doz. Katharion	4	50
	25.	" 1 Balmoral skirt	5	00
		" 1 p'r scissors	1	25
		" 1 comb	1	25
		" 6 y'ds ribbon	3	00
		" 12 " C. flannel	6	00
		" 2 " oil-cloth	3	00
	29.	" 1 cloak, on 20th, charged to father	50	00
Dec.	5.	" cash paid E. F. Mezick	33	50
		" 1 p'r shoes	6	00
		" soap, 1.00 ; button, 1.13	2	13
	6.	" cash	100	00
	6.	" 1 belt	1	00
	12.	" 12 y'ds corset jeans	6	00
		" 6 " black cloth	24	00
		" 2 doz. vest buttons		50
		" 1 " coat "	1	00
Dec.	13.	" ½ y'd black cloth	2	00
	20.	" cash p'd ex. charges for Mr. Houghton	28	00
210	20.	To 1 box raisins	10	00
		" 10 lbs. currants	5	00
1867.		" am't forward	7,190	12
	23.	" 1 bot. brandy	5	00
		" 2 lbs. nuts	1	50
		2 lbs. candy	2	00
	24.	1 dress pattern	34	00
	24.	1 comb & brush	2	50
		1 necktie		50
	31.	1 hoop-skirt	2	50
		1 p'r I. R. overshoes	3	00
	31.	1 Nubia	2	00
		cash p'd subscriptions to periodicals	43	60
1868.				
Jan'y	14.	6 cans oysters	6	00
	18.	cash sent to J. L. Johnson	32	50
		10 y'ds paper cambric	2	50
		16 y'ds lienzo	6	00
	21.	½ doz. Katharion	3	75
	23.	cash paid express charges, Dec. 27	4	00
	23.	8 y'ds flannel, p'r servant	7	00

Feb'y	3.	6 cans yeast-powder	3 00
	4.	cash	400 00
	8.	8 y'ds cambric	2 00
		2 papers pins	50
	11.	1 quire note-paper	50
	17.	7 lbs. starch	3 50
	20.	1 p'r cloth gaiters	4 50
		1 " slippers	2 00
March	3.	1 doz. spools silk	4 50

211

March	3.	To 4 spools cotton thread	50
	4.	" 2 bot's ess. lemon	1 00
	9.	" ½ quire note-paper	25
	20.	" 3 bot's ess. lemon	1 50
	21.	" 2 boxes matches	50
	25.	" 8 y'ds black cambric	2 00
	30.	" 1 lb. tea	3 00
April	6.	" cash	200 00
1868.		" am't forward	7,978 22
April	13.	" cash p'd for trimmings, &c., for buggy	47 74
		" " " " dress-goods by W. Ewing	51 00
	14.	" 1 p'r child's hoops	1 50
	15.	" 12 y's calico	2 00
		" 6 y'ds gingham	2 25
		" 1 doz. Coats' thread	2 50
		" 36 y'ds carpet	90 00
		" 6 " matting	12 00
		" 1 p'r china vases	6 00
	18.	" 2 y'ds belting	1 50
		" 8 Turkish towels	10 00
		" 1 toy bureau	2 50
		" 1 large parlor-lamp	18 00
		" 48½ y'ds muslin	18 19
		" 1 wash-tub	3 50
		" 1 table-cover	9 00
		" 1 gall. coal-oil	2 50
		" 1 can	1 25
	28.	" 4 doz. ale	30 00
May	1.	" 1 p'r kid gloves	3 00

212

May	1.	To 8 p'c's dress braid	2 00
		" 2 p'rs shoes	10 00
	2.	" 3 doz. buttons	1 50
	8.	" 6 dinner-plates	3 00
		" 6 breakfast do.	2 75
		" 4 vegetable-dishes	4 00
		" 6 tumblers	3 00
		" 2 tin pans—50;—37	87
		" 1 cake-turner	50
		" 1 p'r candlesticks	3 00
1868.		" am't forward	8,323 27
May	8.	" 1 tin-bucket	2 00

		" 11½ lbs. butter	11 50
		" 1 broom, 75 ; chamber, 3.00	3 75
		" 14 y'ds calico	2 33
	9.	" 4 bot's lemon	2 00
	11.	" 1 p'r slippers	3 50
	14.	" 2 meat-dishes	3 00
	19.	" 1 paper pins, 25 ; 1 comb, 37	62
		" 1 p'r gaiters, 38 ; 1 thimble, 25	63
		" 1¾ y'ds Irish linen	2 63
		" 6 " " "	3 75
		" 6 " lawn	5 25
	21.	" 1 lb. soda	35
	23.	" ½ doz. serpentine braid	1 00
	30.	" cash p'd express charges	6 40
June	9.	" 10 y'ds muslin	2 50
213	12.	" 2 boxes matches	50
June	18.	To cash	400 00
	20.	" 1 traveling-bag	8 00
		" 3 y'ds lace	37
		" 3½ " ribbon	2 00
		" 3 doz. shirt-buttons	38
Sept.	12.	" 1 p'r kid gloves	2 00
	18.	" 2 boxes matches	50
Oct.	3.	" 11 y'ds alapaca	19 25
		" 2 p'r ladies' shoes—8.00 ;—6.00	14 00
	5.	" 1 y'd alapaca	1 75
	6.	" 6 " cambric	1 50
	14.	" cash	50 00
1868.		am't forward	8,873 23
Oct.	14.	2 y'ds damask	4 50
		5 " calico	83
		6 bot's Katharion	4 50
Nov.	11.	1 lb. soda	35
		2 boxes matches	25
	16.	6 y'ds poplin	4 50
		1 knit hood	1 50
		1 bot. Peruvian bark	2 50
Dec.	2.	cash, per order	303 94
	16.	6 lbs. starch	2 25
	17.	17 y'ds silk	42 50
		14 " paper muslin	8 25
	22.	6 spools silk	1 50
		cash for black cambric	2 00
	30.	" " subscriptions to magazines	28 16
214		10 y'ds bugle trimmings	7 50
1869.			
Jan'y	8.	To 1 p'r hoops	2 50
		1 p'r cloth gaiter's	5 00
	11.	cash	500 00
Feb'y	15.	" paid order to S. B. Elkins	500 00
	16.	" " " to W. B. W. Bernard	500 00
	20.	am't paid for tombstones by R. Campbell & Co.	150 00
			10,947 76

CR.

1867.				
Nov.	20.	By one cloak returned.....	35 00	
1868.				
May	2.	" 1 p'r shoes "	5 00	
Oct.	5.	" " " " "	6 00	
				46 00
		Balance.....		10,901 76
1869.				
March	19.	To cash paid Y. Ochoa for bringing up the remains of N. Webb & child.....		100 00
		" am't paid W. H. Check & Co. for charges on tombstones.....		23 84
		am't paid freight on do.....		18 50
				11,044 10

On which said exhibit is the following endorsement, to wit:

Mrs. G. E. Webb in ac. with W. H. Moore & Co. 11,044.10. Exhibit H. Filed in my office this 18th day of August, 1869. W'm Breeden, clerk.

215 EXHIBIT I.

THE STATE OF TEXAS,
County of El Paso:

Know all men by these presents that I, Adelaide Zubriskie, wife of James Zubriskie, of the county of El Paso, State of Texas, aided, authorized, and assisted by my said husband, for and in consideration of the sum of three thousand two hundred and twenty-five dollars and sixty-one cents, ($3,225.61,) cash in hand paid by W'm H. Moore, W. C. Mitchell, and Elizabeth Webb, of the Territory of New Mexico, the receipt whereof is hereby acknowledged before the signing, sealing, and delivering of these presents, have granted, bargained, sold, transferred, released, and delivered, and by these presents do grant, bargain, sell, convey, transfer, and deliver unto the said William H. Moore, W. C. Mitchell, and Elizabeth Webb, and unto their heirs and assigns forever, the undivided sixth interest and title in and to the following-described property, to wit:

The one-sixth of the tract of land known as the Fort Filmore,
216 and more particularly known as the Brazito, tract of land, containing twenty-one thousand acres, situated, lying, and being in the county of Doña Aña, in the Territory of New Mexico, the interest herein conveyed, transferred, and delivered being the same interest, right, and title conveyed by Hugh Stephenson to the present vendor by deed bearing date the twenty-second day of July, A. D. one thousand eight hundred and fifty-nine, and of record in the office of the county court of El Paso County, State of Texas, in book "C," page 214 and 215; also duly recorded in the records of Doña Aña County, Territory of New Mexico, on the 20th day of August, A. D. 1866, in book of deeds, No. 3, on pages Nos. 53 and 54, reserving to the vendor any claim or claims against the Government of the United States for any damages sustained on the property prior to the date and execution of this deed; together with all and singular the rights, members, hereditа-

ments, and appurtenances to the same belonging, or in any wise appurtaining, "excepting the reservation heretofore made:" To have and to hold all and singular the premises above-mentioned unto the
217 said William H. Moore, W. C. Mitchell, & Elizabeth Webb, and their heirs and assigns, forever; and I hereby bind myself, my heirs, executors, and assigns to warrant and forever defend, all and singular, the title to the said premises or property unto the said William H. Moore, W. C. Mitchell, and Elizabeth Webb, and unto their heirs, administrators, or assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In testimony whereof I have hereunto signed my name and affixed my seal, (using a scrawl for my seal,) in the town of El Paso, State of Texas, this 20th day of May, A. D. 1868.

(Signed) ADELAIDE ZABRASKIE. [SEAL.]
(Signed) J. A. ZABRASKIE. [SEAL.]

In the presence of—
(Signed) M. A. JONES.
(Signed) GEORGE O. EDGERTON.

THE STATE OF TEXAS,
County of El Paso:

Before me, A. J. Fountain, a notary public in and for the county and State aforesaid, personally came and appeared Mrs. Adelaide Zabriskie, to me well known, who, after having been examined
218 by me privately and apart from her husband, and having the same fully explained to her, she, the said Adelaide Zabriskie, acknowledged the same to be her act and deed, and declared she signed, sealed, and delivered the foregoing deed willingly and of her own free will and accord, and without the persuasion, threat, or compulsion of her husband, and for the consideration and purposes therein mentioned, and that she wished not to revoke the same.

In testimony whereof I hereunto sign my name and affix the impress of my official seal this the 6th day of June, A. D. 1868, at my office in the town of El Paso, Texas.

[SEAL.] (Signed) A. J. FOUNTAIN,
Notary Public, El Paso, Texas.

THE STATE OF TEXAS,
County of El Paso:

Before me, A. J. Fountain, a notary public in and for the county and State aforesaid, personally came and appeared James Zabriskie, husband of Adelaide Zabriskie, who acknowledged that he fully
219 authorized his wife to make, sign, execute, and deliver the foregoing deed or instrument of writing, and for the purposes and considerations therein specified.

In testimony whereof I hereunto sign my name and affix the impress of my official seal, at office in El Paso, Texas, on this the sixth day of June, A. D. 1868.

(Signed) A. J. FOUNTAIN,
Notary Public, El Paso, Tex.

On which said exhibit is the following endorsements, to wit:

Exhibit "J." Adelaide Zabriskie, J. A. Zabriskie, to William H. Moore, W. C. Mitchell, Elizabeth Webb. Deed.

Filed for record June 9th, 1868, at 9 o'clock a. m., and recorded at folios 385, 386, 387, and 388, of book of deeds No. 3, of the records of Doña Aña County, N. M.

J. F. BENNETT, *Recorder.*

Filed in my office this 18th day of August, 1869.

WM BREEDEN, *Clerk.*

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221 (EXHIBIT "J.")

THE STATE OF TEXAS,
County of El Paso:

Know all men by these presents, that I, Benancia French, wife of A. H. French, of the county of El Paso, State of Texas, and aided, authorized, and assisted by her husband, for and in consideration of the sum of seven thousand seven hundred and sixty-four dollars and seventy cents, ($7,764.70,) cash in hand paid by William H. Moore, W. C. Mitchell, and Elizabeth Webb, of the Territory of New Mexico, the receipt whereof is hereby acknowledged before the signing, sealing, and delivering of these presents, have granted, bargained, sold, released, and conveyed, and by these presents do grant, bargain, sell, release, convey, and deliver unto the said William H. Moore, W. C. Mitchell, and Elizabeth Webb, and unto their heirs or assigns, the undivided one-sixth interest and title in and to the following-described property, to wit: The one-sixth of the tract of land known as the Brazito tract of land, containing twenty-one thousand acres of land, situated, lying, and being in the
222 county of Doña Aña, in the Territory of New Mexico, theretofore made: To have and to hold all and singular the premises above mentioned, unto the said William H. Moore, W. C. Mitchell, and Elizabeth Webb, their heirs and assigns, forever, and I hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises or property unto the said William H. Moore, W. C. Mitchell, and Elizabeth Webb, and unto their heirs, administrators, executors, or assigns, against every person whomsoever lawfully claiming or to claim the same, or any portion thereof. In testimony whereof I have hereunto subscribed my name and affixed my seal, (using a scrawl for seal,) in the town of El Paso, State of Texas, this the 20th day of May, A. D. 1868, in the presence of the subscribing witnesses.

(Signed) BENANCIA FRENCH. [SEAL]
(Signed) A. H. FRENCH. [SEAL.]

In presence of—
(Signed) M. A. JONES.
(Signed) GEORGE O. EDGERTON.

THE STATE OF TEXAS,
County of El Paso:

223 Before me, Albert J. Fountain, a notary public, personally came and appeared Benancia French, to me well known, who, after having been examined by me privately and apart from her husband, "A. H. French," and having the same fully explained to her, she, Benancia French, acknowledged the same to be her act and deed, and declared she signed, sealed, and delivered the foregoing deed willingly and of her own accord, and without the persuasion, threats, or compul-

sion of her husband, and for the consideration and purposes therein specified, and that she wished not to revoke the same.

In testimony whereof I hereunto sign my name and affix the impress of my official seal, at office in El Paso, Texas, this 6th day of June, A. D. 1868.

(Signed) A. J. FOUNTAIN,
Notary Public, El Paso Co., Tex.

STATE OF TEXAS,
County of El Paso:

Before me personally came and appeared A. H. French, hus-
224 band of Benancia French, who acknowledged that he fully authorized his wife to make, sign, and deliver the foregoing instrument of writing, *and* 388 of book of deeds to No. 3 of the records of Doña Aña County, N. M.

J. F. BENNETT, *Recorder.*

Filed in my office this 18th day of August, 1869.
W'M BREEDEN, *Clerk.*

EXHIBIT "J."

THE STATE OF TEXAS,
County of El Paso:

Know all men by these presents that I, Benancia French, wife of "A. H. French," of the county of El Paso, State of Texas, and aided, authorized, and assested by her husband, for and in consideration of the sum of seven thousand seven hundred and sixty-four dollars and seventy cents, ($7,764.70,) cash in hand paid by William H. Moore, W. C. Mitchell, and Elizabeth Webb, of the Territory of New Mexico, the receipt
225 whereof is hereby acknowledged befor the signing, sealing, and delivering of these presents, have granted, bargained, sold, released, and conveyed, and by these presents do grant, bargain, sell, release, convey, and deliver unto the said William H. Moore, W. C. Mitchell, and Elizabeth Webb, and unto their heirs or assigns, the undivided one-sixth interest and title in and to the following-described property, to wit: the one-sixth of the tract of land known as the Brazito tract of land, containing twenty-one thousand acres of land, situated, lying, and being in the county of Doña Aña, in the Territory of New Mexico, the interest herein conveyed, transferred, and delivered being the same interest, right, and title conveyed by Hugh Stephusen to the present vendor by deed bearing date the twenty-second (22nd) day of July, A. D. one thousand eight hundred and fifty-nine, and recorded in the office of the county court of El Paso County, State of Texas, on the 5th day of May, A. D. 1866, in book C, on pages 214 & 215, and duly recorded in the records of Doña Aña County, Territory of New Mexico, on the 20th day of August, A. D. 1866, in book of deeds No. 3, on pages Nos. 53 & 54, reserving to the vendor any claim or claims against the United States
226 Government for damages sustained on the property previous to the date of this deed or instrument of writing, together with all and singular the rights, members, appurtenances to the same belonging, or in any wise appurtaining, excepting the reservation, and for the purposes and considerations therein contained.

In testimony whereof I herewith sign my name and affix the impress

of my official seal, at office in El Paso, Texas, on this 6th day of June, A. D. 1868.

(Signed) A. J. FOUNTAIN,
Notary Public El Paso Co., Tex.

On which said exhibit is the following endorsements, to wit:

Exhibit "J." Benancia French to William H. Moore, W. C. Mitchell, Elizabeth Webb. Deed.

Taken for record June 9th, 1868, at 9 o'clock a. m., and recorded at folio 389, 390, & 391 of book of deeds No. 3, of the county of Doña Aña, New Mexico.

J. F. BENNETT, *Recorder.*

Filed in my office this 18th day of August, 1869.

W'M BREEDEN, *Clerk.*

227 In chancery. In district court for Mora County.

GERTRUDE E. WEBB
vs.
WILLIAM H. MOORE, W. C. MITCHELL.

The seperate answer of William C. Mitchell to the bill in chancery and amended bill filed herein against him and William H. Moore.

The said defendant, William C. Mitchell, saving and reserving to himself all benefit of exception to the many errors, uncertainties, and imperfections in the complainants' bill contained for his seperate answer thereto, or to so much of said bill as he is advised is material for him to answer unto, answering, says:

That he admits that said complainant is a resident of Mora County, New Mexico, as stated in said bill, and that this defendant, William C. Mitchell, is a resident of St. Louis, in the State of Missouri, and that the said Nathan Webb, now deceased, together with the said William H. Moore and the said William C. Mitchell, wer', prior to the death of said Webb, formerly partners in a mercantile firm, doing business at Fort Union, New Mexico, under the firm-name and style of W. H.
228 Moore & Co., the partners composing said firm consisting of the said W'm H. Moore, William C. Mitchell, and Nathan Webb, deceased, and that the said W'm H. Moore and W'm C. Mitchell are the surviving partners of the firm of W'm H. Moore & Co.

The said respondent further admits that the said complainant intermarried with the said Nathan Webb at the time and place, and in the manner set fourth and stated in said bill of complaint, and that the said complainant resided with her said husband at Fort Union until the 22nd day of June, 1863, when they returned to El Paso County, Texas, where they continued to reside up to the time of the death of said Nathan Webb, who departed this life, as stated in said bill, at Franklin, El Paso County, Texas, on the said 15th day of October, 1866, the said Nathan Webb having then and there died intestate.

This respondent further admits the said Nathan Webb and the said complainant had but one child, Julia Webb, as the fruit of said marriage, and that said child, Julia Webb, departed this life in tender infancy, prior to the death of said Nathan Webb, her father.

229 This respondent further admits that there are no children, the

fruits of said marriage of the said Nathan Webb and the said complainant.

The said respondent further admits that the said complainant took out letters of administration on the estate of her said deceased husband, Nathan Webb, from the probate court of El Paso County, Texas, and that Exhibit "A," filed with the bill of said complainant, is a true and correct copy of said letters of administration so taken out by said complainant upon the estate of the said Nathan Webb; but the said defendant denies that the said letters of administration gave the said complainant any right or authority over the business of W'm H. Moore & Co., or N. Webb & Co., except to receive that portion of the business of said firms belonging to said Nathan Webb under his contract with said firms. When the said surviving partners of said firms, William H. Moore, & this respondent, William C. Mitchell, should be able to wind up the business of said firms by paying the debts due by said firms, selling the goods, wares, merchandize, personal, and real estate belonging to said firms, & collecting the debts due the said firms from its various customers, and until the business of said firms has been so settled
230 and closed, the said respondent denies the right of said complainant to take, demand, or receive one dollar out of the assets of the said firms of William H. Moore & Co., or N. Webb & Co., until the debts were paid, and the net balance due each partner according to his interest in said firms was fully ascertained.

The said respondent further admits that the said complainant took out from the probate court of Mora County, New Mexico, on the 22nd day of July, 1868, ancillary letters of administration on the estate of her husband, the said Nathan Webb, deceased, and that Exhibit "B," referred to in said bill of complaint, is a correct copy of said ancillary letters of administration.

This respondent admits that he has been informed and believes that, at one time, the law of Texas provided that the wife should be sole heir of her husband as to the personal estate in the absence of de'cendants, and in the absence of a will. This respondent denies that he entered into and formed a copartnership with the said Nathan Webb in the year one thousand eight hundred and fifty-nine, for the purpose of
231 carrying on and transacting the business of post-sutlers at Fort Union, or as general dealers in merchandise, and positively denies that the said Nathan Webb was a copartner with this respondent and the said William H. Moore, as contractors to furnish the troops stationed at the various military posts in this Territory; but this respondent admits and states the fact to be that, on or about the 15th day of June, 1861, this respondent and the said William H. Moore did enter into a copartnership with said Nathan Webb as post-sutlers and merchants, in the mercantile business, thus being by them carried on at Fort Union, New Mexico, and which had been for some time previous carried on by them at that place before the formation of said copartnership. This respondent avers the fact to be that, under and by the terms of said copartnership so entered into by the said respondent and the said William H. Moore with the said Nathan Webb, that he, the said Nathan Webb, was to be entitled to receive one-eighth interest in the
232 profits of said business. This respondent also denies that the said Nathan Webb, at the time stated in the said bill, or at any time, furnished and paid into said copartnership business the sum of fifteen thousand dollars, or any other sum whatever, in cash or property, as is in said bill mentioned. And the said respondent avers that the said Nathan Webb came into the business-house of said W'm H.

Moore and this respondent a clerk and employee, and with a view to advance his prospects and give him an interest in the business. He was taken into the firm upon the contract above stated, of one-eighth of the profits of the business, in lieu of his wages as clerk and employee.

The said respondent admits that the said Nathan Webb did take charge of the books, and act as cashier of said business, in which capacity he had been previously acting; but the said respondent denies that, in consideration thereof, it was agreed between said partners that the said Nathan Webb should be equally interested with the said William
233 H. Moore and this respondent, and share equally alike in all the profits resulting from said business, but in truth and in fact the consideration to be paid for his services was to be one-eighth of an interest of the profits of said business, as above stated.

This respondent denies that the terms, conditions, and undertakings were ever reduced to writing, or ever executed in writing, as stated in said bill.

This respondent admits that the said Nathan Webb, W'm H. Moore, & this respondent did continue to carry on and transact the business of said copartnership as merchants at Fort Union, New Mexico, from the time of the commencement of the same until some time in the year A. D. 1863, with fair success and comparatively few losses; but this respondent cannot state the exact amount of annual profits that accrued to said business, as the balance-sheets for that time have not yet been struck.

This respondent denies that, early in the year A. D. 1863, it was agreed by and between the said Nathan Webb, said William H. Moore, and this respondent, to extend the business of said copartnership
234 to Southern New Mexico and El Paso County, Texas, upon the same terms and conditions as is stated in said bill, but states the fact to be that, in the year A. D. 1863, it was agreed by and between the said Nathan Webb, the said William H. Moore, and this respondent, that the said Nathan Webb was to establish a house of business in Franklin, Texas, and that said business so done in Franklin, Texas, and Southern New Mexico, was to be done in the name and style of N. Webb & Co., and that the said Nathan Webb, William H. Moore, and this respondent should be equally interested in said business of N. Webb & Co., but that said interest of said Nathan Webb, in the firm of W'm H. Moore and Company, at Fort Union, New Mexico, was to continue to be one-eighth of the profits of said business.

This respondent admits that it was agreed by and between the said Nathan Webb, W'm H. Moore, and this respondent, that the said William H. Moore should remain at Fort Union, New Mexico, and that the said William C. Mitchell should remain in the States for the
235 purpose of purchasing and ship'ing goods to New Mexico in behalf of said copartnership, and that the said Nathan Webb was to take charge of the business of N. Webb & Co., to be established in Franklin, Texas, and Southern New Mexico.

This respondent admits that the business of merchants in El Paso County, Texas, and Southern New Mexico was established at the places and times in said bill mentioned, but the said respondent avers that the goods, wares, and merchandise for the said business of N. Webb & Co. were furnished by and with the credit, and paid for with the funds, of said William H. Moore and this respondent.

This respondent admits that the business was done of the firm of N. Webb & Co. at Franklin, Texas, as in said bill stated, and that at times said Nathan Webb, jointly with other persons, did obtain contracts to furnish supplies to the United States, upon which contracts some money

was made, but what amount this respondent cannot state, and that the only business transacted by the said firm of N. Webb & Co., in
236 Franklin, Texas, and Southern New Mexico, from which any profit was derived, was the said Government contracts so made by the said Nathan Webb and others.

This respondent also admits that, in addition to the store established in Franklin, Texas, that the said Nathan Webb, William H. Moore, and this respondent became post-sutlers at Fort Bliss, Texas, and that the business both at Franklin and Fort Bliss was supervised and directed by the said Nathan Webb until his death, but this respondent denies that said business at the above-named places was successful or that any profits were derived from the same. This respondent denies that from the time the said Nathan Webb commenced business as a partner in the firm of N. Webb and Company in Mesilla and Franklin, as aforesaid, up to the time of his decease, there was made and gained a clear profit upon their entire business above one hundred thousand dollars per annum, and the said respondent denies that the said William
237 H. Moore on several occasions or on any occasion, or in any letter or letters to the said Nathan Webb, deceased, declared that the copartnership had acquired, during the war of the rebellion, several hundred thousand dollars, and that they often, at their said store at Fort Union, received more that two thousand dollars per day.

This respondent further denies that balance-sheets, showing the amount of profits of said copartnership made out from the books at Fort Union, were abstracted from the said complainant, for the said respondent avers the fact to be that only one balance-sheet of the said William H. Moore, and this respondent, and the said Nathan Webb, of the firm of W'm H. Moore & Co., was made out, and that balance-sheet has never been abstracted, for it is still in the possession of said complainant, and filed as Exhibit C in her bill, and it is hardly to be believed that a person engaged in abstracting balance-sheets from said complainant would have left any of them in her possession while engaged in that business.

This respondent most positively denies that the amount of profits
238 of said business, during the years 1864, 1865, and 1866, were equal to the sum of one hundred thousand dollars per annum.

This respondent again positively denies that during all the time or any of the time of said copartnership, that the said Nathan Webb was a full partner in all the business of said firm of W. H. Moore & Co., and that he was entitled to one-third of the profits resulting from the business of said firm of W. H. Moore & Co.

This respondent admits that, after the death of said Nathan Webb, the said complainant, as administratrix and heir-at-law of the personal estate of her deceased husband, did apply to the said W. H. Moore for a settlement of the affairs of said copartnership so far as the estate of her deceased husband was concerned, but this respondent is informed and believes that the said William H. Moore did not request the said complainant to take no further steps looking to the prompt and speedy settlement of the estate of her deceased husband in the said copartnership, and the said respondent denies that the said W'm H. Moore
239 desired that the said complainant would allow the interest of the said Nathan Webb, and the share of the said Nathan Webb, her husband, in the said business, to be retained by this respondent and the said W'm H. Moore, for the use and benefit of said copartnership, and the said respondent denies that the said W'm H. Moore ever promised the said complainant that the interest of the said Nathan Webb should

remain, as in his lifetime, undisturbed and undivided, or that the said complainant should not withdraw the share and interest of her said husband from the business of said copartnership until the time stated in the said bill, but the said respondent states the fact to be that whenever the said complainant applied for a settlement of her said interest of her deceased husband in said copartnership business, that the said W'm H. Moore stated and explained to her that it was then impossible to settle up the copartnership business, and ascertain the interest of the said Nathan Webb, deceased, for the reason that there was a large amount of goods on hand to be disposed of at Franklin, Texas,
240 and Fort Bliss, and that the debts of the firm were to be paid, and the debts due the firm collected or settled in some way, and that the books of the firm had not been posted so that any correct and definite settlement could then be made of the interest of the said Nathan Webb in said business, but that as soon as possible, consistent with the interest of said firm, it was the intention of said W. H. Moore and this respondent to pay the debts, collect the debts, and dispose of the goods on hand belonging to said firm, in order that it might be final'y closed and settled.

This respondent further denies that the said William H. Moore or this respondent, or either of them, agreed with the said complainant, as administratrix, that in case she would not withdraw the interest of her said husband's estate from said copartnership, that the estate of her deceased husband, at the time of settlement, should be allowed an equal share in all the profits that might accrue from the transacting and carrying on the business of said firm by them as surviving partners, until the first day of July, 1867.

241 This respondent further denies that the said William H. Moore especially requested of the said complainant not to take any further steps in the settlement of the estate of her deceased husband, but this respondent admits that the said William H. Moore may have said to said complainant, upon some occasion, that it was not necessary for her to consult with or advise with any lawyer upon the subject of said settlement, and this respondent admits that the said William H. Moore did promise the said complainant that he would protect and guard well the interests of said estate, and settle the same, as soon as possible, upon just and equitable principles, which was, and still is, the intention of this respondent, and the said William H. Moore to do, and this respondent states that, inasmuch as there was no intention on the part of the said respondent and the said William H. Moore, to deprive the said complainant of a single cent of what she was entitled to on final settlement of the business, and inasmuch as said *said* administratrix had no debts of the said Nathan Webb to pay, and inasmuch
242 as the said complainant had a good home, well furnished, to live in, and was supplied with money amply sufficient for her support and maintenance, this respondent and the said William H. Moore thought, and still think, that bringing a lawsuit involving this respondent and the said W'm H. Moore in costs and expenses to a great amount, and also involving said complainant in costs and expenses of attorneys' fees, would be unwise, unnecessary, and greatly to the injury of the interests of said complainant, to envolve this respondent and the said William H. Moore in litigation about the interest of her deceased husband, which, whatever it might be on final settlement of the business, this respondent and the said William H. Moore were both able and willing to pay without suit or expense of any kind.

This respondent admits that the said interest of the said Nathan

Webb, from the time of his death up to the present time, has remained unsettled, for the causes above specified in this answer, except such amounts in money as the said complainant, from time to time, has drawn out for her use and benefit.

243 This respondent denies that the business of said copartnership has been conducted with the same success and advantage as at any period previous to the death of the said Nathan Webb.

This respondent positively denies any and all combination and confederation together or with any other persons to wrong or injure the said complainant in the premises. This respondent admits that the said complainant did address a letter to the said William H. Moore at the time in said bill stated, urging and requesting the said William H. Moore to give to said complainant some definite answer as to a settlement with her, and as to what was the interest and estate of her said husband in said copartnership, and this respondent admits that the said William H. Moore did not answer said letter, and this respondent avers that the said William H. Moore did not answer said letter for the reasons that the said William H. Moore had frequently stated, explained to said complainant fully the reasons why a settlement could not then be made, nor the interest of the said Nathan Webb, deceased, correctly ascertained.

244 This respondent denies that there was the amount of goods, wares, and merchandise at Fort Union, New Mexico, as is in said bill stated, or that the value of the same was one hundred thousand dollars, as is in said bill stated. But this respondent states the fact to be that from the best information and belief the amount of goods, wares, and merchandise at Fort Union at the time mentioned did not exceed sixty or seventy thousand dollars.

This respondent admits that there was also at said time other stocks of goods at Fort Bliss and Franklin, Texas, but denies that the same amounted in value to the sum of one hundred thousand dollars and upwards, as is in said bill mentioned; but this respondent states the fact to be that the same did not, as this respondent is informed and believes, exceed in value seventy thousand dollars.

This respondent admits that there was owing to said copartnership business at Franklin and El Paso County, Texas, some amount

245 of money but what amount this respondent cannot state as the books are in the hands of an agent of this respondent and the said William H. Moore for settlement as surviving partners of said firm; but this respondent has been informed by said agent, and believes, that very little, if any, of said amounts so owing can be collected. This respondent also admits that there was at said time due to said firm at Fort Union the amount in said bill mentioned, a portion of which has been collected, and a further portion may be, but yet remains uncollected.

This respondent denies that there was cash on hand at Fort Union or Franklin, Texas, belonging to said copartnership, to a large amount, as is stated in said bill, but states the fact to be that if there was any amount of money on hand at Franklin, and no doubt there was, at the death of said Nathan Webb, the sum was taken and disposed by said complainant and her agents, who took charge of the safe and business after the death of said Nathan Webb, at Franklin and Fort Bliss, and not a dollar of said money so alleged to be

246 on hand at Fort Bliss and Franklin, Texas, ever came into the hands of this respondent, nor the said William H. Moore, as this respondent is informed and believes.

This respondent further denies that there was deposited with the house of Rob't Campbell & Co., in St. Louis or elsewhere in the States, the sum of three hundred thousand dollars, or any other sum, except a sufficiency to enable the said respondent and the said William H. Moore to carry on their business as merchants, either in the name of W'm H. Moore or W. H. Moore & Co.

This respondent denies that at said time the said copartnership owed but a small amount, and that the various stocks of goods above mentioned were fully paid for as is in said bill stated.

This respondent denies that said complainant has only drawn from said copartnership business about the sum of four thousand dollars, as is stated in said bill, but the said respondent avers that the books of said copartnership will show *will show* that the said complainant
247 has drawn from said business a larger amount than four thousand dollars.

This respondent further denies that at the time of the death of the said Nathan Webb, husband of said complainant, his interest in said copartnership was not less than one hundred and fifty thousand dollars in cash, but this respondent states the fact to be that the interest of the said Nathan Webb, deceased, was and will be a very much less sum when said business shall be finally settled and closed, and the amount of the interest of the said Nathan Webb, deceased, properly ascertained.

This respondent admits that he and the said William H. Moore have ample means belonging to said copartnership to at once satisfy and pay over whatever may be found due (if anything) the estate of the said Nathan Webb, on a final settlement of the business of said copartnership; and this respondent admits that although some time has elapsed since the decease of the husband of complainant, yet this respondent and the said William H. Moore have been entirely unable
248 to close up the copartnership business in which the said Nathan Webb was interested, for the reason that a considerable portion of the stocks of goods then on hand at Franklin and Fort Bliss, Texas, were yet undisposed of, and for the further reason that the books of N. Webb & Co. were, at the death of said Nathan Webb, left by him unposted, and the same have not yet been so fully posted as that a balance-sheet of the business of N. Webb & Co. can be correctly, fully, and properly made out and struck.

This respondent denies positively that the delay of this respondent and the said William H. Moore in settling the business of said copartnership with the said complainant is for the purpose of defrauding the said complainant of her just rights, or of using the funds belonging to said estate in carrying on their private business, as is charged in said bill.

This respondent admits that he and the said William H. Moore, as surviving partners of said copartnership, have been removing the goods at Franklin and Fort Bliss, Texas, to the Territory of Arizona, as this respondent believes he and the said William H. Moore had
249 a right to; and the said respondent states as a reason why the said goods were so removed, that they were informed by Henry Cuneffe, their agent, that said goods could not be sold at Franklin or Fort Bliss or in that region at any price, and the said William H. Moore had been informed and believed that said goods could be sold and disposed of in Arizona, where the same are now being disposed of and sold.

This respondent positively denies that the funds belonging to the

said Nathan Webb are being used by the said respondent and the said William H. Moore, or being transferred by them out of the jurisdiction of the Mora district court, except such sums as are necessary to pay off debts and enable this respondent and the said William H. Moore, as surviving partners, to close up their said partnership business without loss and sacrifice.

This respondent further denies that there is a small stock of goods on hand at the store at Fort Union, or that the said defendants are using any portion of the funds belonging to said estate of the said Nathan Webb, deceased, in taking contracts to supply the troops
250 at Fort Union and other military posts in this Territory, or various mining enterprises or speculations.

This respondent cannot state what funds the said complainant has, but he is informed and believes that the said William H. Moore has always and on all occasions supplied the said complainant with such funds as she has applied for.

The said defendant having answered the original bill filed herein, by way of further answer herein to the sup'lemental bill says that some time during the month of August or September, 1868, he is informed and believes that the said William H. Moore, upon application of the said complainant, did consent to allow the said complainant to appoint some one to examine the books of said firms of W. H. Moore & Co. & N. Webb & Co., jointly with a skilful book keeper that the said William H. Moore then had employed in posting up the books of said firms, which said book-keeper so employed by the said William H. Moore is still engaged in posting up said books.

251 The said defendant denies that the said William H. Moore promised the said complainant that said books should be posted by the 25 day of December last, or that the said William H. Moore would on that day make a settlement of the interest of said complainant's husband in said business.

This respondent further states that at the time of the decease of the said Nathan Webb, the firm of N. Webb & Co. in Franklin and Fort Bliss, in El Paso County, Texas, was indebted to the firm of W'm H. Moore & Co., at Fort Union, New Mexico, in about the sum of forty thousand dollars.

This respondent further states that, previous to the death of said Nathan Webb, he drew out of the business for his own private use and purposes about the sum of fifteen thousand dollars, and that after the decease of the said Nathan Webb the said complainant and her agents & representatives drew out of the said business, for the purposes of paying the private debts of the said Nathan Webb, deceased, and for the use of said complainant, the further sum of fifteen thousand dol-
252 lars, making in all the sum of about thirty thousand dollars so taken out of the business by the said Nathan Webb, in his lifetime, and the said complainant and her agents since the death of said Nathan Webb.

This respondent, by way of fuller and more detailed answer to the general allegations in said bill, would state that the capital stock in the firm of W. H. Moore & Co., at the date when the said Nathan Webb was admitted into said firm, was forty-six thousand three hundred and eighty-two $\frac{30}{100}$ dollars, and consisted of merchandise then on hand, and debts due the firm, and that said firm at said date were owing the sum of thirty thousand three hundred and thirty-seven & $\frac{83}{100}$ dollars, leaving a balance of actual capital amounting to the sum of sixteen thousand forty-four dollars and forty-seven cents. This respondent further

states that at the time of the death of the said Nathan Webb it is impossible for the said defendant to state the exact amount of capital that belonged to the said firm of N. Webb & Co., but this respondent
253 states that the capital consisted of debts due said firm, merchandise on hand, a tract of land situate in Doña Anñ County, New Mexico, known as the Brazito tract, purchased of the heirs of Hugh Stephenson, and cash on hand, amounting in all to about sixty-five thousand dollars, as appears by the books of said firm of N. Webb & Co.

This respondent refers to Exhibit ("A,") filed with the answer of his co-defendant W'm H. Moore, to show the amount of debts owing by said firm of N. Webb & Co., as also the debts due said firm, as shown by the books of N. Webb and Co.

This respondent, further states that he has been informed and believes that a large portion of the debts due said firm of N. Webb & Co. are worthless and insolvent, and that little can be collected from the same.

This respondent, further answering, says that Exhibit B, filed with the amended answer of the said William H. Moore, will show the amount of the debts paid and to whom paid, and what property sold and
254 what debts collected since the death of Nathan Webb of the firm of W. H. Moore & Co., with exception that in July, previous to the death of said Nathan Webb, one C. W. Adams became a partner in the business then being transacted at Fort Union, N. M., and a large amount of the debts which by said Exhibit B appear to have been collected, were not, in fact, collected, but simply transferred from the books of W. H. Moore & Co. to the books of W. H. Moore, Adams & Co., and many of them remain yet uncollected.

This respondent further states that he is unable to state the amount and value of the property belonging to said firm of W. H. Moore & Co.; that same consisted of personal and real estate, a flowring-mill, situate on the Mora River, in Mora County, New Mexico, and a mule train, consisting of thirty-four wagons and about two hundred and eighty mules; and for a detailed statement of the amounts due said firm, and not collected and remaining unsettled, and also of the amount due and owing by said firm, this respondent refers to Exhibit C,
255 filed with the answer of his co-defendant, W'm H. Moore.

This respondent further answering, states that the capital stock of N. Webb & Co., when it commenced business, was forty-three thousand and nin'ty-two & $\frac{94}{100}$ dollars, and consisted of goods, wares, and merchandise purchased and paid for by W. H. Moore & Co.

This respondent further answering, states that the amount of stock on hand at the time of the death of said Nathan Webb, belonging to the firm of N. Webb & Co., amounted to the sum of seventy-eight thousand nine hundred and seventy-nine & $\frac{10}{100}$ dollars, consisting of a stock of goods then on hand, from which about the sum of twenty thousand dollars has been realized and received by the firm of W. H. Moore & Co, and about five thousand dollars more, this respondent is informed, may be realized from a remnant of goods belonging to said firm of N. Webb & Co., now in the hands of an agent of this respondent and said William H. Moore, for sale at Tucson, Arizoña Territory.

This respondent further answering, states that there was drawn out by Nathan Webb, prior to his death, from the firm of N. Webb &
256 Co., for the private use of the said Nathan Webb, the sum of twenty-three thousand dollars, a large amount of which was in cash, as shown by the books of said firm. The said respondent further states that he knows of no property belonging to the firm of N. Webb & Co., remaining unsold, except machinery for a steam-mill, at Hart's

mills, El Paso County, Texas, the Brazito tract of land, in Doña Aña County, New Mexico, and the small lot of goods now being sold at Tucson, Arizoña, and the only debt of any consequence owing and unpaid by the firm of N. Webb & Co., known to this respondent, is about the sum of sixty thousand dollars due by the firm of N. Webb & Co. to the firm of W. H. Moore & Co., and the debts due said firm of Webb & Co. will be found by reference to Exhibit "A," filed with the answer of William H. Moore herein, and most of which debts are utterly worthless and uncollectible.

This respondent further states that he is informed and believes that the mother of Nathan Webb, deceased, is still alive, and that
257 by the laws of New Mexico and Texas this respondent is advised and believes that the mother of said Nathan Webb has an interest in such real estate as the said Nathan Webb had and held at the time of his death, and that the mother of said Nathan Webb is a necessary and proper party to this suit. And the said William C. Mitchell has now fully answered all the matters and things in said bill and amended bill contained, fully and specifically, according to his knowledge, information, and belief, now asks that this bill be dismissed, as to him, with costs. All of which is respectfully submitted.

WILLIAM C. MITCHELL,
By ASHURST & WATTS,
His Atty's.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

William C. Mitchell, upon his oath, states that the matters and things in the above answer contained, so far as stated from his own knowledge, are true in substance and in fact, and, so far as stated from the information of others, he believes *to* them to be true.

W. C. MITCHELL.

Subscribed and sworn to before me this 18th day of August, 1869.
J. G. PALEN, *C. J., &c.*

258 On which said answer is the following endorsements, to wit:

Gertrude E. Webb vs. William H. Moore and William C. Mitchell. Seperate answer of W. C. Mitchell, filed in my office this 18th day of August, 1869. W'm Breeden, clerk.

And be it remembered that hereafter, to wit, on the 21st day of August, A. D. 1869, being the sixth day of the August, A. D. 1869, term of the U. S. district court for the first judicial district of the Territory of New Mexico in and for the county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX,
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

This cause came on to be heard upon the motion of the respondents, by their solicitors, for a rule against the complainant, to make
259 Sarah Webb, mother of Nathan Webb, deceased, a party to this suit, which motion is in the words and figures following, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX OF NATHAN WEBB, deceased,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

The said defendants, by Mess. Clever & Watts, their attorn*ies*, now move the court for a rule against the complainant, to amend the bill herein, by making Sarah Webb, mother of Nathan Webb, deceased, a party to this suit, in conformity with the order of the court herein at the last term.

CLEVER & WATTS,
For def'ts Moore & Mitchell.

On which said motion is the following endorsements, to wit:

Gertrude E. Webb vs. Moore & Mitchell. Chancery. Motion for rule to make Sarah Webb party filed in open court this 19th day of August, 1869. W'm Breeden, clerk.

Which motion being *agreed* by counsel, and the court being
260 sufficiently advised in the premises, overrule said motion, and the said respondents except to the ruling of the court, and now file their bill of exceptions herein, which said bill of exceptions is in the words and figures following, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX OF THE estate of Nathan Webb,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL. } Chancery.

Be it remembered that, at the August term of the district court for Mora County, Territory of New Mexico, 1869, on the 19th day of August, 1869, said defendants, by their att'ys, filed in court the following motion, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX OF NATHAN WEBB, deceased,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

The defendants, by Mess. Clever & Watts, their att'ys, now move the court for a rule against the complainant, to amend the bill herein, by making Sarah Webb, mother of Nathan Webb, deceased, a party
261 to this suit, in conformity with the order of the court herein at the last term.

CLEVER & WATTS,
For def'ts Moore & Mitchell.

And afterwards, to wit, on the 21st day of August, 1869, the said motion was, by agreement of parties by their attorn*ies*, set down for hearing, and upon said hearing the bill was read to the court in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

In the district court of the first judicial district, sitting in the county of Mora, Territory of New Mexico, for the trial of causes arising under the laws of the Territory, at the March term, A. D. 1869.

To the Hon. John S. Watts, chief justice of the supreme court of said Territory, and judge of the first judicial district court thereof, in chancery sitting:

Your oratrix, Gertrude Elizabeth Webb, a resident of the
262 county of Mora aforesaid, administratrix of the estate of Nathan Webb, deceased, and heir-at-law of the personal estate of her said deceased husband, brings this, her bill of complaint, against William H. Moore, a resident of said county of Mora, and William C. Mitchell, a resident of the city of St. Louis, in the State of Missouri, formerly partners, jointly with said Nathan Webb, in his life-time, in a mercantile firm doing business under the firm-name and style of W. H. Moore & Co., and now surviving partners of said firm.

And thereupon, humbly complaining, your oratrix would show unto your honor that, on or about the fourteenth day of September, in the year of our Lord one thousand eight hundred and sixty-two, she intermarried with said Nathan Webb, according to the rites and ceremonies of the Episcopal church, at Fort Union, New Mexico; that she, with her said husband, resided at said Fort Union from the time of their said marriage until the twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-three, when they removed to Franklin, El Paso County, in the State of Texas, where they resided
263 from the time last aforesaid until the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-six, at which last-named time and place the said Nathan Webb departed this life intestate.

That they had but one child, Julia Webb, the fruit of said marriage, who died previous to the death of her said father, Nathan Webb.

That, upon the death of her said husband, your oratrix took out letters of administration on his estate from the probate court of said county of El Paso, in the State of Texas. A copy of said letters is herewith filed and marked "Ex. A," and prayed to be made a part of this, your oratrix' bill of complaint, with leave to refer as often as may be necessary.

Your oratrix would further state that, on the twenty-second day of July, in the year of our Lord one thousand eight hundred and sixty-eight, ancillary letters of administration were granted her by the probate court of the county of Mora aforesaid, as by a copy of said letters herewith filed and marked "Ex. B," and prayed to be made a
264 part of this bill, with leave to refer, &c., will more fully appear.

Your oratrix would further state and show unto your honor that, by the laws of the State of Texas, she is the sole heir of the personal estate of her said husband, he having died intestate and without issue as aforesaid.

Your oratrix would further state that, some time in the year of our Lord one thousand eight hundred and fifty-nine, as your oratrix is informed and believes, her said husband and said defendants entered into and formed a copartnership for the purpose of carrying on and transacting the business of post sutlers at said Fort Union, and also as general dealers in merchandise and contractors to furnish supplies to the

troops stationed at the various military posts in said Territory, under the firm-name and style of W. H. Moore & Co.; that her said husband furnished and paid into said copartnership, as she is informed and believes, the sum of fifteen thousand dollars in cash, and agreed further
265 with said defendants to take charge of the books and do and perform the duties of cashier of said copartnership, and in consideration thereof it was agreed between said copartners that her said husband, Nathan Webb, and said defendants should be equally interested, from the time of the commencement of said copartnership, in all the business of said copartnership, and share equally and alike in all the profits resulting from the same. It was further agreed between the said defendants and her said husband that, at the time of entering into said copartnership, the said Nathan Webb should not, in any manner, be liable or responsible in any wise for the debts or liabilities of the firm of Moore & Reese, of which said defendant, William H. Moore, had been formerly a member and partner.

Your oratrix is informed and believes, and so states unto your honor, that the terms, conditions, and undertakings of said copartnership were reduced to writing, but that said writing and agreement of copartnership, if not lost or destroyed, is not in the possession or control of your oratrix, but she charges that if the same is in existence, it is in the
266 possession and control of the said defendants.

Your oratrix would further state that said defendants and her said husband continued to carry on and transact the business of said copartnership at Fort Union, New Mexico, from the time of the commencement of the same until some time in the year of our Lord one thousand eight hundred and sixty-three, with very fair success and comparatively few losses; that during said time your oratrix cannot now state the exact amount of annual profits that accrued to said firm, but she believes and charges they would exceed the sum of twenty thousand dollars per annum, as the books and papers of said copartnership, now in the possession of said defendants at said Fort Union, will probably show.

Your oratrix would further state and show unto your honor that early in the year one thousand eight hundred sixty-three it was agreed by and between her said husband and said defendants to extend the business of said copartnership to Southern New Mexico and El Paso County, Texas, upon the same terms and conditions, as your oratrix
267 is informed and believes, as when first commenced, with the exception that said deceased Nathan Webb, instead of continuing as book-keeper and cashier of said firm as aforesaid, should thenceforth take charge of, control, and direct the business of said copartnership in Southern New Mexico and El Paso County, Texas, under the firm-name and style of N. Webb & Co., the interest of her said husband in the whole business of the firms of W. H. Moore & Co. and N. Webb & Co., both in Texas and New Mexico, being equal and the same; that said defendant, William H. Moore, should remain at Fort Union, New Mexico, and that said defendant, William C. Mitchell, should remain in the States for the purpose of purchasing and shipping goods to New Mexico in behalf of and in the interest of said copartnership.

Your oratrix would further state that, in accordance with said last-mentioned agreement, her said deceased husband, on the 26th day of February, A. D. one thousand eight hundred and sixty-three, as said
268 copartnerr and member of said firms, established a larg' store at Mesilla, New Mexico, and furnished the same with the goods of said firm, and on the tenth day of April next following, moved the same to Franklin, Texas, and re-established said store at said place, the same

being at that time the headquarters of the then military district of Arazoña, in the military department of New Mexico, where a large body of United States troops was continually stationed, at which said town of Franklin he carried on and transacted as such partner and for said copartnership a large wholesale and retail business in goods, wares, and merchandise, as also often contractor to furnish supplies to the United States troops stationed at said town and in said military district; that he gave his entire time and devoted his best energies to the carrying on and furthering the interest and business of said copartnership, oftentimes obtaining large contracts to furnish supplies to said troops on the part of said copartnership, from which large sums of money
269 were made and accumulated for the benefit of said copartnership.

Your oratrix would further state that, in addition to the store established at Franklin, Texas, as aforesaid, the said defendants and her deceased also some time in the year became post sutlers at Fort Bliss, Texas, which said business her said deceased husband superintended and directed, and that he continued to carry on and transact the business of said copartnership at said town of Franklin, and the military post of Fort Bliss, Texas, until the time of his death, during all which time your oratrix is informed and believes, and so states, that said copartnership was successful in all of their business affairs, both at Franklin, Fort Union, Fort Bliss, and elsewhere, and that from the time her said deceased husband commenced business as a partner in Mesilla and Franklin, as aforesaid, up to the time of his said decease, made and gained as clear profits upon their entire business transac-
270 tions above one hundred thousand dollars per annum, and that the said defendant, William H. Moore, on several occasions and in various letters to her deceased husband, declared that said copartnership had acquired during the war of the rebellion several hundred thousand dollars, often receiving at their said store at Fort Union more than two thousand dollars per day.

Your oratrix would further state that a large portion of the correspondence and particularly all the letters of the said defendant, William H. Moore, to her deceased husband relative to the amount of profits declared by said copartnership from the year A. D. 1863 to 1866, and relative to the interest of her said deceased husband in said copartnership, together with balance-sheets showing the amount of annual profits of said copartnership at Fort Union, New Mexico, were abstracted, by parties unknown to your oratrix, from her private apartments, during the temporary absence of your oratrix; that owing to this circumstance, of all such correspondence there only remained in her possession one
271 of said balance-sheets showing the amount of the profits of said copartnership up to the fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three, taken from the books of said copartnership at Fort Union, New Mexico, a copy of which said balance-sheet is herewith filed and marked "Ex. C," and prayed to be made a part of this bill, with leave to refer, etc.

Your oratrix would further state that from information received from her said deceased husband, and from other sources, she believes, and so charges, that the amount of profits during the years 1864, 1865, and 1866, up to the time of the death of her said husband, were fully equal to said sum of one hundred thousand dollars per annum.

Your oratrix further states and charges that, during all of the time above specified, and until the death of her said husband, he was a full and equal partner in all of the business of said copartnership, both in

New Mexico and Texas, and as such entitled to one-third of the profits resulting from the same.

Your oratrix would further state and show unto your honor that
272 after the death of her said husband, she, as such administratrix and heir-at-law of her deceased husband, applied to the said defendant, William H. Moore—the said William C. Mitchell being then absent from the Territory—for a settlement of the affairs of said copartnership, so far as the interests of the estate of her deceased husband were concerned, whereupon the said defendant, William H. Moore, by way of reply to your oratrix in this behalf requested your oratrix on behalf of said defendants that your oratrix take no further steps looking to the prompt and speedy settlement of the estate of her said husband in said copartnership, and states that said defendants greatly desired that your oratrix would allow the interest and share of her said husband's estate in said business to be retained by said defendants for the use and benefit of said copartnership, promising that the same should remain, as in the lifetime of her said husband, undisturbed and undivided, and that
273 your oratrix as the representative of the interest and share of her said husband should not withdraw the same from the business of said copartnership until the first day of July, A. D. one thousand eight hundred and sixty-seven, at which time said defendants would be ready and willing to make full and complete settlement with the estate of her said husband.

And your oratrix here charges and states that said defendants agreed to and with your oratrix, as administratrix of the estate of her deceased husband, that, in case your oratrix would not withdraw the interest of her said husband's estate from the said copartnership, *that* the estate at the time of the settlement should be allowed an equal share to all of the profits that might accrue from the transacting and carrying on of said business, as surviving partners, until the first day of July, A. D. 1867.

Your oratrix would further state, and show unto your honor, that said defendants, William H. Moore especially, requested of your ora-
274 trix not to take any further steps in the settlement of the estate of her said deceased husband, and particularly not to consult with or advise with any lawyer upon the subject of said settlement, promising that said defendants would protect and guard well the interests of said estate, and, finally, at the expiration of said extended time, would settle the same upon the most just and equitable principles.

Your oratrix would further state and show unto your honor that, having full faith and confidence in the fairness, good intentions, and integrity of the said defendants, and with a view to promote the interests of the estate of her said husband, she consented to said proposition upon the conditions proposed by said defendant, William H. Moore, on the part of said defendants.

And your oratrix further states and charges, from the time of the death of her said husband until the said first day of July, A. D. 1867, and until the filing of this bill, the whole estate and interest of her
275 said deceased husband in said copartnership business, except the sum of about four thousand dollars, drawn out by your oratrix for her necessary expenses, has remained in said firm and copartnership, and formed a part of the capital stock thereof, and that she is informed and believes that, since the death of her said husband, the business of said copartnership has been conducted with the same success and advantage as at any previous period.

Your oratrix would further state and show unto your honor that she had well hoped that said defendants, in good faith, would have complied

with and carried out in all respects the agreement so made and entered into with your oratrix as aforesaid; but so it is, may it please your honor, and your oratrix charges the truth to be that, when she called, after the period so agreed upon between her and said William H. Moore for said settlement had expired, and as administratrix and heir at law of her deceased husband, required of said defendants to comply with their said agreement, and to ascertain and pay over to your oratrix all the
276 interest of her deceased husband's estate in said copartnership business, the said defendants, William H. Moore and William C. Mitchell, combining and confederating together, and with divers other persons at present unknown to your oratrix, whose names when discovered your oratrix prays she may be at liberty to insert herein, with apt words to charge them as parties thereto, with proper process, etc., and contriving her to wrong and injure your oratrix in the premises, utterly and absolutely refused to comply with her said reasonable request—at times pretending that her deceased husband had little or no interest or property in said copartnership; at other times declaring that the interest of her said deceased husband in said copartnership ceased at the time of his death, and whol'y ignoring the agreement made with your oratrix as aforesaid to allow the interest and estate of her said husband to remain and be by said defendants used and managed until the first day of July, A. D. 1867.

277 Your oratrix would further state that, as a final effor*d* on her part to elicit some definite information and answer from said defendants, and, if possible, secure a settlement, and fully discharg' her duties as such administratrix, she, on the 27th day of June, A. D. 1868, addressed a letter to said William H. Moore, urging and earnestly requesting him to give your oratrix some definite answer as to a settlement with her and as to what was the interest and estate of her said husband in said copartnership, and further urging, as a reason, that near two years had elapsed since she had taken out letters of administration from the probate court of the county of El Paso, in the State of Texas, and that she was unable to make the necessary return as such administratrix to said court; that, although said letter was duly delivered to said William H. Moore, and he was then requested to answer the same, yet he has refused so to do up to the filing of this bill, a copy of which said letter is herewith filed and marked Ex. D, and prayed
278 to be made a part of this bill, with leave to refer, etc.

Your oratrix would further state and show unto your honor that, at the time of the death of her deceased husband, said copartnership had a large amount of goods, wares, and merchandise at Fort Union, New Mexico, being a complete and full assortment, the exact value of which your oratrix cannot now state, but believes the same would amount to the sum of one hundred thousand dollars, as also other stocks of goods at Fort Bliss or Franklin, Texas, amounting in value, as she is informed and believes, to the sum of one hundred thousand dollars and upwards. At the same time there was owing to said defendants and her said husband at Franklin and in El Paso County, Texas, forty-five thousand dollars, as she has been informed by said defendant William H. Moore; also, the sum of twenty thousand dollars at Fort Union, New Mexico; that she believes and has been informed that there was cash on
279 hand at Fort Union and at Franklin, Texas, belonging to said copartnership a large amount; the exact sum she cannot now state; and that there was deposited at the house of Robert Campbell & Co., in St. Louis, Missouri, and elsewhere in the States, about three hundred thousand dollars belonging to the said copartnership; that she cannot

now state whether the last-mentioned sum was deposited in the name of and to the credit of said defendant William H. Moore, or in the name of said firm of W. H. Moore & Co.; that, at said time, as your oratrix is informed and believes, said copartnership owed but a small amount, and that the various stocks of goods above mentioned were fully paid for.

Your oratrix would further state and show unto your honor that, since the death of her said husband, she has drawn from said copartnership not exceeding about the sum of four thousand dollars for the purpose aforesaid, and she fully believes and is informed that, at the time of the death of her said deceased husband, his interest in said copart-
280 nership was not less than one hundred and fifty-thousand dollars in cash, and that said sum could have been realized for his said interest at once, and that said sum is now, together with the profits thereon made by said defendants, justly due, in equity and good conscience due the estate of her said husband, all of which, your oratrix believes the books of said copartnership, upon a fair investigation, will more fully show.

Your oratrix would further show unto your honor that, owing to the refusal of said defendants as aforesaid to make any settlement with her as administratrix, or to give her any satisfaction concerning the same, she is entirely unable and powerless to comply with her duties as such, or make the necessary returns to the probate court of the county of El Paso aforesaid, or to make any inventory, as required by the laws of said Territory and by her oath to be filed in the office of the probate court for the said county of Mora.

Your oratrix further charges and states that said defendants
281 have ample means belonging to said copartnership to at once satisfy and pay over what is justly due the estate of her said husband, and that more than one year has elapsed since the said defendants have had all the time they desired in which to determine the amount of said estate and pay over the same to your oratrix.

And your oratrix here charges and states that the delay of said defendants in settling with your oratrix is for the purpose of defrauding your oratrix of her just rights, and using the funds belonging to said estate in carrying on their own private business, without any just and fair compensation to the estate of her said deceased husband.

Your oratrix would further state and show unto your honor that she believes and is informed that said defendants, without consulting your oratrix and without her consent, are removing the remaining goods at Franklin and Fort Bliss, Texas, to the Territory of Arizona, and that the funds belonging to said copartnership are being used by said defendants, and being transferred by them out of the jurisdiction of
282 this court; that said defendants have but a small stock of goods on hand at their store at Fort Union, New Mexico, and that your oratrix is informed and believes they are using a large portion of the funds belonging to the estate of her said husband in taking contracts to supply the troops at Fort Union and other military posts in said Territory, as also in various mining enterprises and speculations.

Your oratrix further states that, in applying for letters of administration upon the estate of her deceased husband, she was required by said probate court of El Paso County, Texas, to make, and did make, an affidavit that she would make a perfect inventory of all the estate of said Nathan Webb, her said deceased husband, and that she is wholly unable to do so because of the withholding by said defendants of all information upon this subject; that two years, the time limited for the settlement of estates of deceased persons in the State of Texas,

has nearly expired since the date of her said letters of administration, and she greatly fears unless she files a proper report in said probate court within the time prescribed, she will incur a forfeiture, and for the same reason she is unable to comply with the laws in relation to intestate estates in the Territory of New Mexico, and will incur a like forfeiture in said Territory.

Your oratrix further states that she is entirely without means, save the interest she has in the estate of her deceased husband now in the hands of said defendants.

In tender consideration of the premises, and inasmuch as your oratrix is without adequate relief by the strict rules of common law, she refers all these matters and things to your honor's court in chancery, where the same are properly cognizable and reliable, and prays—

First. That said defendants, William H. Moore and William C. Mitchell, may be made parties defendant to this her bill of complaint, with proper process to bring them into court, and that be required upon their corporal oath and to the best of their respective ability, full, true, direct, and perfect answers make, to all and singular the allegations and matters in this bill contained, as fully and perfectly as if they were each hereunto specially interrogated concerning the same.

2nd. Your oratrix prays that said defendants be compelled to turn over and deliver immediately, to such person as your honor may select, all of the books, papers, evid'nces of indebtedness, letters and letter-books, belonging or in anywise appurtaining to the copartnership existing between said defendants and her said husband in his lifetime, from the year of our Lord one thousand eight hundred and fifty-seven, to the fifteenth day of October, A. D. one thousand eight hundred and sixty-six, as also a full statement of the amount of the profits accrued to said defendants as surviving partners of said firm and copartnership from the time of the death of said Nathan Webb until the filing of this bill, and that said special commission or person so selected by your honor be required to report as early as practicable the result of his examination and investigation of said books and other papers, and the amount shown by them to be due the estate of her said husband.

3rd. That said defendants may be strictly enjoined from removing any of the funds or property belonging to said copartnership out of the jurisdiction of this court, and from in any manner investing and using said funds or any part thereof for speculation or otherwise, for their own use or benefit, or from disposing of the goods, wares, and merchandise, or other property of said copartnership, without the consent of your oratrix, until the further order of this court.

4th. That said defendants be at once compelled, by order of this honorable court, to pay over to your oratrix a sufficient sum of money to enable her to carry on this suit, and for her support and maintain'ce as the widow and heir at law of her said deceased husband, during the pendancy of the same.

5th. That said defendants be required to produce or place on file in this court the articles of agreement and copartnership, if any such exist, or in their power, or under their control, made or entered into between said defendants and her said husband.

6th. That upon the final hearing of said cause, your honor will be pleased to decree a full, final, and complete settlement between the said defendants and your oratrix as administratrix and heir at law of her said husband, and will decree to your oratrix as such administra-

trix and heir the sum found to be due by said defendants to the estate of her said deceased husband, as also such interest and profits on the same from the time of the death of her said husband until the final determination of this suit as to your honor may seem meet and just, and that your honor will grant unto your oratrix such other and further relief generally in the premises, as to your honor may seem meet and just and the nature of her cause require.

May it please your honor to grant unto your oratrix the writ of subpœna issuing out of and under the seal of this court, commanding said defendants to appear at the next regular term of the district court
287 for the county of Mora, then and there to answer the premises and abide the order or decree of said court in the premises.

S. B. ELKINS &
T. D. WHEATON,
Sol. for Com.

Gertrude Elizabeth Webb, being duly sworn, upon her oath states that the matters and things set fourth and contained in the foregoing bill, those as stated from her own knowledge are true, and those stated upon the knowledge of others she believes to be true.

GERTRUDE ELIZABETH WEBB.

Sworn to and subscribed before me this 31st day of August, A. D. 1868.

JOHN S. WATTS,
Judge, &c.

In chancery district court, county of Mora, at the March term, A. D. 1869.

GERTRUDE E. WEBB
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

Gertrude E. Webb, complainant in the foregoing bill, by way of supplement and in addition to the same, further states that in the month of August last when said bill of complaint was sworn to, the said
288 defendant, William H. Moore, learning that it was the intention of your oratrix to at once institute suit for a settlement of her said husband's interest in the business of said firm of W. H. Moore & Co., and N. Webb & Co., prevailed upon your oratrix, on the ground that the books belonging to said firm were not duly posted, to desist from her intention of bringing said suit, promising and pledging himself to allow your oratrix to appoint some one as her agent to examine said book and th'

[Torn off.] of said defend [Torn off.]
[Torn off.] nist some one to
jointly with the agent of your oratrix, said books, and determine the interest of your oratrix.

Your oratrix states that she appointed a person skilled in book-keeping to examine said books, but owing to the fact that said books were not properly or correctly posted, her said agent, jointly with the party appointed by said defendants, could determine nothing nor arrive at any conclusion, and on the further promise of defendants that
289 said books should be duly posted by the 25th day of December last, and on that day or about that time a settlement should be

had with your oratrix as administratrix; your oratrix took no steps looking to a settlement in the courts.

Your oratrix further states that she has most patiently waited since said 25th day of December, for said defendants to comply with their promise and settle with your oratrix, but up to the time of filing this bill herein, they have not offered any settlement with your oratrix, or any reason for failing to comply with their last promise.

Submitting the above supplement for the consideration of the court, and, as a part of her said bill, your oratrix prays as she has heretofore prayed in her said bill.

S. B. ELKINS, *for Comp.*

G. E. Webb, complainant in the foregoing bill, being duly sworn, upon her oath states that the matters and things set fourth in the foregoing supplement are true to the best of her knowledge and belief.

GERTRUDE E. WEBB.

290 Sworn to and subscribed before me this the 15 1869.

[Torn off.]

And the answer of said William H. Moore, one of the defendants, was then read to the court, in the words and figures following, to wit:

In the district court for the 1st judicial district, Mora County, Territory of New Mexico.

GERTRUDE E. WEBB
vs.
WILLIAM H. MOORE, & WILLIAM C. MITCHELL, Sarah Webb, def'ts. } Chancery.

The seperate amended answer of William H. Moore to the bill in chancery, filed against him and others in the district court for Mora county, 1st judicial district, in and for the Territory of New Mexico, and now pending in said court.

This defendant, William H. Moore, saving and reserving unto himself all benefit of exception to the many errors, uncertainties, and imperfections in the said complainant's bill contained, for answer thereunto, or so much thereof as he is advised is material for him to
291 answer unto, answering, says that he admits that the said complainant did take out letters of administration on the estate of Nathan Webb, deceased, as it is set fourth in said bill, and this defendant also admits that said complainant is a resident of Mora County, New Mexico, and that this defendant is also a resident of the said county. This defendant also admits that said Nathan Webb departed this life at El Paso, Texas, on the 15th day of October, 1866. This respondent also admits that the said Nathan Webb, deceased, William C. Mitchell, and this respondent were formerly partners in the mercantile business and doing business at Fort Union, New Mexico, under the firm-name and style of W'm H. Moore & Co.; and that the said William C. Mitchell and this respondent are the surviving partners of said firm of W'm H. Moore & Co. This respondent further admits that the said complainant intermarried with the said Nathan Webb at the time and place, and in the manner stated in said bill, and that she resided with her husband at Fort Union, New Mexico, until the time mentioned
292 in said bill, when they removed to El Paso County, Texas, and

that they continued to reside at El Paso, County, Texas, until the time of the death of said Nathan Webb as stated in said bill.

This respondent also admits that there are no children living as the fruits of said marriage. This respondent further admits that the said complainant, on the 27th day of July, 1868, took out ancillary letters of administration on said estate in Mora County, New Mexico, as stated in said bill. This respondent further admits that he is informed and believes that, under and by virtue of the laws of the State of Texas, the said complainant is the sole heir to all the personal estate of Nathan Webb, deceased, situate in the State of Texas, but said respondent denies that said laws of the State of Texas can vest in said complainant any interest in or title to the personal or real estate of said Nathan Webb, situate and being, at the date of his death, in the Territory of New Mexico, and that such portions of the testate of the said Nathan Webb, deceased, as was situate in New Mexico at the death
293 of the said Nathan Webb, is to be inherited and distributed as provided by the laws of the Territory of New Mexico, and not in conformity with the laws of Texas, which have no opperation or binding force upon property situate within the limits of another State or Territory; the said Nathan Webb having died without making any will or disposition of his property.

This respondent denies that he entered into and formed a copartnership with the said Nathan Webb, in the year one thousand eight hundred and fifty-nine for the purpose of carrying on and transacting the business of post sutlers at Fort Union, New Mexico, or as general dealers in merchandise, and positively denies that said Nathan Webb was ever a copartner with the said William C. Mitchell and this respondent, as contractor to furnish the troops stationed at the various military posts in the Territory of New Mexico, as is charged in said bill; but this respondent states the fact to be, that on or about the 13th day of June, A. D. 1861, the said William C. Mitchell and this respond-
294 ent did enter into a copartnership with the said Nathan Webb, as post sutlers and merchants, in the mercantile business then being by them done and transacted at Fort Union, New Mexico; and it was understood and agreed upon between the said William C. Mitchell, this respondent, and the said Nathan Webb, deceased, that the said Nathan Webb should have and be entitled to receive an interest of one-eighth in the profits of said business.

This respondent further, by way of explanation of said admission of said Nathan Webb, deceased, into the firm of W'm H. Moore and William C. Mitchell, further states that said Nathan Webb, deceased, was on the 16th day of December, 1859, employed in the store of William C. Mitchell and this respondent as a clerk, at a salary of one thousand five hundred dollars per annum, and so continued in said occupation as clerk until the 18th day of February, 1861, and he then left Fort Union, New Mexico, for the States, without the intention to return, so far as known to this respondent, and remained absent until May, 1861,
295 when the said Nathan Webb returned to Fort Union, New Mexico, and expressed a wish to resume his position as clerk at the same wages formerly paid him, and thereupon the said William C. Mitchell and this respondent consented to admit the said Nathan Webb into said firm upon the terms above mentioned of one-eighth interest in the profits of said business; and upon said terms said Nathan Webb entered into business as a member of the firm of W'm H. Moore & Co., consisting of said William C. Mitchell, Nathan Webb and this respondent.

This respondent further denies that the said Nathan Webb, at the time stated in said bill, or at any other time, furnished, or paid into said copartnership business, the sum of fifteen thousand dollars or any other sum whatever, either in cash or property, as is stated in said bill; and this respondent further avers that said Nathan Webb, deceased, at the time he was so admitted into the business of the said William C. Mitchell and this respondent, was utterly destitute of money or property, and, in fact, put nothing into said business but services and business tal-
296 ent, which this respondent admits were valuable and good.

This respondent admits that the said Nathan Webb did take charge of the books and act as cashier of said business, in which capacity he had been previously acting; but this respondent denies that, in consideration thereof, it was agreed between said partners that the said Nathan Webb should be equally interested in the business of said firm with the said William C. Mitchell and this respondent, and share equally with them in all the profits resulting from the said copartnership business, but states that the consideration of his services was to be said one-eighth interest in the profits of said business as above stated.

This respondent denies that the terms and conditions and undertakings of said copartners were ever reduced to writing.

This respondent admits that the said William C. Mitchell, Na-
297 than Webb, and this respondent did continue to carry on and transact the business of said copartnership as merchants at Fort Union, New Mexico, from the time of the commencement of the same until some time in the year A. D. 1863, with fair success and comparatively few losses; but said respondent denies that the annual profits of said firm would exceed the sum of one hundred thousand dollars per annum, and also denies that the books and papers of said firm show that any such amount of profit was annually made by said firm; and this respondent further states that, inasmuch as the business of said firm has not been fully settled and closed, it is impossible for this respondent to state the exact or true amount of profits resulting from said business, but, in the subsequent portions of this answer, this respondent places before the court all the facts relating to said business, in order that the court may form its own judgement and opinion as to the amount of an'ual profits likely to result from said business on its final settlement of the same.

298 This respondent denies that early in the year A. D. 1863, it was agreed by and between the said Nathan Webb, William C. Mitchell, and this respondent, to extend the business of said copartnership to southern New Mexico and El Paso County, Texas, upon the same terms and conditions as is in said bill stated; but states the fact to be that, in the year A. D. 1863, it was agreed by and between the said Nathan Webb, William C. Mitchell, and this respondent, to commence a mercantile business at Franklin, Texas, under the name and style of N. Webb & Co., and that the said Nathan Webb was to take charge of, controle, and direct said business in Franklin, Texas, and that, in the said business of said firm of N. Webb & Co., so done in Franklin, Texas, and Southern New Mexico, that said Nathan Webb, William C. Mitchell, and this respondent should be equally interested and share equally the profit and loss of said business so conducted by him under the name and style of N. Webb & Co.; but this re-
299 spondent avers that said enterprise of N. Webb & Co., so entered upon, did not, in any manner, change, alter, or abrogate the interest of said Nathan Webb in the business of W'm H. Moore & Co. at Fort

Union, New Mexico, and that said interest of said Nathan, in the firm of W. H. Moore & Co., still continued to be a one-eighth interest in the profits of the business of W'm H. Moore and Company, at Fort Union, as was at first agreed upon, when said Nathan Webb was admitted into said firm of W. H. Moore & Co.

This respondent admits that it was understood and agreed by and between the said Nathan Webb, William C. Mitchell, and this respondent, that the said William H. Moore should remain at Fort Union, in charge of the business of W'm H. Moore & Co. at Fort Union, New Mexico; that the said Nathan Webb should take charge of the business of N. Webb & Co. at Franklin, Texas, and Southern New Mexico, and that the said William C. Mitchell should remain in the States for the purpose of purchasing and ship'ing goods to New Mexico in behalf of the
300 interest of said copartnership, which was done by the said parties in pursuance of said agreement.

This respondent admits that the business of the firm of N. Webb & Co., in Franklin, Texas, and in Southern New Mexico, was established at the times and places in said bill mentioned, but further states that the entire capital stock and goods for said firm of N. Webb & Co. was furnished upon the credit of the firm of W. H. Moore & Co., of Fort Union, and paid for by said firm of W'm H. Moore & Co. This respondent admits that the business of N. Webb & Co. was done at Franklin, Texas, as stated in said bill, and that at times the said Nathan Webb jointly, with other persons, did obtain contracts to furnish supplies to the United States, upon which contracts money was made, but what amount this respondent does not know, nor has he been able to find out from the books of N. Webb & Co., and, from an exami-
301 nation of the books of N. Webb & Co., this respondent avers that it will appear that the Government contracts, in which the said Nathan Webb was interested, was the only business transacted by him in Franklin, Texas, and Southern New Mexico, from which any profits were received.

This respondent admits that, in addition to the store established at Franklin, Texas, the said Nathan Webb, Wiliiam C. Mitchell, and this respondent became post sutlers at Fort Bliss, Texas, and the business, both at Franklin, Texas, and Fort Bliss, Texas, was supervised and directed by the said Nathan Webb until the time of his death; but he denies that the said business at the above-named places was successful, or that any profit whatever resulted from the same, and the keeping of the books and the management of the business of said firm of N. Webb & Co. remained in the hands and under the controle of the said Nathan Webb up to the time of his death, from the commencement of said business, and if the business of said firm of N. Webb & Co. did re-
302 sult in any profit, the books of N. Webb & Co., as kept by and under the supervision of said N. Webb, do not show it, nor furnish any evidence of said profits.

This respondent denies that from the time the said Nathan Webb commenced business as a partner in Mesilla and Franklin, as aforesaid, up to the time of his decease, that there was made and gained, as clear profit upon their entire business, above one hundred thousand dollars per annum; and this respondent further denies that the said William H. Moore, on several occasions or on any occasion, or in various letters or in any letters to the said Nathan Webb, deceased, declared that said copartnership had acquired during the war of the rebellion several hundred thousand dollars or any other sum, and he also denies having stated that they often received at said store at Fort Union more than

two thousand dollars per day, and if said sum had been received, at any time, per day, it would afford no certain or definite data upon
303 which to estimate the entire net profits of said business of W'm H. Moore & Co.

This respondent further denies that balance-sheets, showing the amount of profits of said copartnership, made out from the books at Fort Union, were abstracted from said complainant, as charged in said bill, because this respondent states the fact to be that only one balance-sheet was ever made out from the books of W. H. Moore & Co., and that balance-sheet has not been abstracted by any one, as it is in the possession of the said complainant and filed with her bill of complaint and marked as Exhibit C in said bill.

This respondent further denies that the amount of profits during the years 1864, 1865, and 1866, were equal to the sum of one hundred thousand dollars per annum, or anything like that sum, and inasmuch as said business, of said business of the firms of W. H. Moore & Co. and N. Webb & Co., is yet unclosed and unsettled, it is not possible for this respondent to state with certainty the profit and loss
304 attending the business of said firm of W. H. Moore & Co. and N. Webb & Co., but this respondent will fully state all the facts relating to said business, so far as known to him, and shown by the books of said firm of W. H. Moore & Co. and N. Webb & Co., in order that the proper estimate may be made by the court on the final hearing of this cause.

This respondent again most positively denies that during all or any of the time specified in said bill, *that* the said Nathan Webb was a full and equal partner in all the business of said copartnership, and as such entitled to one-third of the profits of the same, and the said respondent avers that the said Nathan Webb had no interest whatever in the business of W. H. Moore & Co., at Fort Union, New Mexico, except a one-eighth interest in the profit of said business, and had no interest in the business of N. Webb & Co. conducted by him in Franklin, Texas, and in Southern New Mexico, except a one-third interest in the profit and loss of said business of N. Webb & Co., in common with the
305 said William C. Mitchell and this respondent, each of whom in like manner had a one-third interest in said business of N. Webb & Co. in common with the said Nathan Webb, deceased.

This respondent admits that after the death of the said Nathan Webb the said complainant, as administratrix and heir at law of her deceased husband to and interest in his estate, did apply to the said respondent W'm H. Moore for a settlement of the affairs of said copartnership so far as the estate of her deceased husband, the said Nathan Webb, was concerned, but the said respondent William H. Moore denies that he requested the said complainant to take no further steps looking to the prompt and speedy settlement of the estate of the said Nathan Webb, deceased, husband of said complainant, and that he desired that the said complainant would allow the interest and the share of the said Nathan Webb, deceased, in said business to be retained by the
306 said William H. Moore and the said William C. Mitchell for the use and benefit of said copartnership, or that this respondent promised that the interest of said Nathan Webb, deceased, should remain, as in his lifetime, in said business, undisturbed and undivided, or that the said complainant should not withdraw the share and interest of her said husband Nathan Webb, deceased, from the business of said copartnership until the time stated in said bill, but states the fact to be that when the said complainant applied to this respondent for a

settlement of the interest of her said deceased husband Nathan Webb, this respondent replied and stated to said complainant that it was utterly impossible to settle up at once and ascertain the condition of the business of N. Webb & Co. and W'm H. Moore & Co., and then ascertain what was the interest of the said Nathan Webb in said copartnership business, for the reason that at the death of the said Nathan Webb there remained on hand at the store in Franklin and Fort Bliss,
307 Texas, a large amount of goods unsold, and in southern New Mexico that said firm of N. Webb & Co. had due and owing by said firm a large amount of debts to be paid, and that there was due and owing on the books of said firm of N. Webb & Co. a large amount, to be collected if possible; that it was not possible for him to know, nor was it proper for him to make settlement with her of the said interest of said Webb in said business until the debts of said firm were fully paid, the goods of said firm sold and converted into cash, and the debts, so far as possible, due to said firm of N. Webb & Co. were collected; and that until such things were done, it was impossible for this respondent to know what was the true interest of said complainant as administratrix of Nathan Webb, deceased, in said business, and it was not his duty to make any settlement or payment of said supposed interest, until the said business was finally settled up and closed, and then it would be a pleasure as well as a duty for this respondent and the
308 said William C. Mitchell, as surviving partners of the firm of W. H. Moore & Co. at Fort Union, New Mexico, and of N. Webb and Company at Franklin and Fort Bliss, Texas, to pay over to the said complainant, as the administratrix of Nathan Webb, whatever sum might be found due her as such administratrix and heir to certain portions of the personal and real estate of which the said Nathan Webb died possessed, after the payment of his just debts.

This respondent further states that it is his interest and the interest of the said William C. Mitchell, as the surviving partners of the firm of W'm H. Moore & Co. and N. Webb & Co., to close up the business of said firms as fast as possible; and whatever interest, *and whatever interest* the said complainant may have in said business, this respondent and the said W'm C. Mitchell are ready, willing, and able fully to pay and discharge, if not shown to have been already discharged.

This respondent denies that the said William C. Mitchell and
309 this respondent, or either of them, at any time agreed with the said complainant as administratrix of the estate of her deceased husband, that in case she would not withdraw the interest of her said husband's estate from said copartnership, that the estate at the time of the settlement should be allowed an equal share in all the profits that might accrue from the transacting and carrying on of said business as surviving partners until the first day of July, A. D. 1867.

This respondent denies that he especially requested of the said complainant not to take any further steps in the settlement of the estate of her deceased husband, but admits that he may on some occasion have said to said complainant that it was not necessary for her to consult with or seek the advice of any lawyer on the subject of said settlement; and said respondent admits that *that* he did state to said complainant that he would protect and guard well the interest of said estate and settle the same, as soon as could be properly done,
310 upon the most just and equitable principles; and such is still the intention of this respondent.

This respondent admits that the interest of the said Nathan Webb, deceased, from the time of his death up to the present time has re-

mained unsettled, for the reasons above stated, except such sums as has been drawn by and paid to said complainant.

This respondent denies that said business of said copartnership has been conducted with the same success and advantage as at any period previous to the death of said Webb.

This respondent most positively denies all combination and confederation charged in said bill to wrong and injure the said complainant in the premises. This respondent admits that the said complainant did address a letter to him about the time stated in said bill, urging and requesting this respondent to give the said complainant some definite answer at to a settlement with her, and as to what was the interest of her said husband, Nathan Webb, in said copartnership
311 business; and said respondent admits that he did not answer said letter, for the reason that he had frequently explained to said complainant the reasons why said settlement could not then be made and why said interest of her husband could not be then ascertained.

This respondent denies that there was the amount of goods, wares, and merchandise at Fort Union, New Mexico, stated in said bill; and also denies that the same were worth one hundred thousand dollars as is stated in said bill, but states the fact to be that there was only at said time sixty or seventy thousand dollars' worth of goods on hand, to the best information and belief of this defendant.

This respondent admits that there was also at said time other stocks of goods at Franklin and Fort Bliss, Texas, but denies that the same amounted in value to the sum of one hundred thousand dollars and upwards, as is in said bill stated; but states the fact to be that the same did not, as this respondent is informed and believes, exceed in
312 value seventy thousand dollars. This respondent admits that there was owing to the said copartnership business at Franklin, Texas, as appears by the books of N. Webb & Co., the sum of $85,802.37, as will more fully appear by a list of said debts taken from said books and hereby made a part of this answer, and marked as Exhibit "A," herein.

This respondent states that many of said debts due and owing to said firm of N. Webb & Co. are worthless, and the parties insolvent, and with the best exertions of a special agent employed for that purpose, only the sum of $30,793.06 has been collected, as appears by the enclosed, marked as Exhibit , and asked to be made a part of this answer.

This respondent also admits and states the fact to be that, at the death of the said Nathan Webb, there was due and owing by the firm of N. Webb & Co., of Franklin, Texas, to the firm of W'm H. Moore & Co., of Fort Union, the sum of about $66,000, and that there has
313 been paid of that sum the amount of $30,793.06 only.

This respondent denies that there was cash on hand at Fort Union or Franklin, Texas, belonging to said copartnership, to a large amount, as is stated in said bill, but states the fact to be that if there was any amount of money on hand at Franklin, Texas, or Fort Bliss, at the time of the decease of the said Nathan Webb, the same was taken out and disposed of by the said complainant and her agents, who had control of the stores and safe for weeks after the death of said Nathan Webb, and said sum of money so on hand at Franklin, at the death of Nathan Webb, must have *went* into the hands of the said complainant and her agents, as the same never came to the hands of the said William C. Mitchell and this respondent, who did not take possession of

said business of said N. Webb & Co. at Franklin, Texas, until many weeks after the death of said Webb, and during all which time said business was under the management and control of the said complainant and her agents and employees.

314 This respondent further denies that there was deposited with the house of Robert Campbell & Co., of Saint Louis, Missouri, or elsewhere in the States, the sum of three hundred thousand, or any sum, except a sufficiency to enable the said respondent and *and* the said William C. Mitchell to discharg' their liabilities as they fell due and make such purchases as the necessity of their business demanded, either in the name of William H. Moore or that of William H. Moore & Co.

This respondent further denies that at the said time in said bill mentioned, the said copartnership owned but a small amount of goods, or that the various stocks of goods above mentioned were fully paid for, as is in said bill stated.

This respondent denies that the said complainant has only drawn from said copartnership business about the sum of four thousand dollars, as in said bill is stated. And this respondent avers that

315 said complainant has drawn out of the business of said N. Webb & Co. and been paid to her therefrom the sum of $5,211.98, as will appear by reference to exhibit filed herein as a part of this answer, taken from the books of N. Webb & Co.

This respondent further denies that at the time of the death of the said Nathan Webb, husband of said complainant, his interest in said copartnership was not less than one hundred thousand dollars in cash; but this respondent states the fact to be that when said business is closed and the correct statement of profit & loss made, the said interest of said Webb will appear less to a wonderful extent than the amount stated in said bill.

This respondent admits that he and the said William C. Mitchell have ample means belonging to said copartnership to pay and discharge any balance which may be found due to said complainant after deducting the amount taken from said firm of N. Webb & Co., and appropriated to the private and individual use of N. Webb, the husband of said complainant, amounting, as appears by the books of N.

316 Webb & Co., kept by N. Webb, to the sum of $23,130.59, as appears by said books of N. Webb & Co.. and a copy of which account is hereby made a part of this answer, marked as Exhibit D herein, and after deducting the amount paid said complainant since the death of her said husband.

This respondent avers that he is ready and willing to pay whatever balance may be found justly due said complainant on a full and final settlement of said business. And said respondent avers that he and the said William C. Mitchell are not required by law to pay over to said complainant a single dollar until the final settlement of said business is made and completed.

This respondent admits that although some time has elapsed since the death of the said Nathan Webb, husband of said complainant, yet this respondent and the said William C. Mitchell, in spite of their best exertions to that end, have been unable to close up all the co-

317 partnership business in which the said Nathan Webb was interested, for the reason that a portion of the goods on hand at Franklin and Fort Bliss at the death of said Nathan Webb had just been disposed of, and many of the accounts due said firm of N. Webb & Co. are yet uncollected, for which reasons no full and definite statement of the condition of the business of the firm of N. Webb & Co. can

now be made, and no correct and final balance-sheet of said business of N. Webb & Co. can now be made.

The said respondent denies that the delay of the said William C. Mitchell and this respondent in said settlement is for the purpose of defrauding the said complainant of her just rights, or of using the funds belonging to said estate to carry on their own private business; and said respondent states that said charge comes with a bad grace from the widow of a former clerk, who, together with her deceased husband, has drawn out of said business for their own private use the sum of $42,992\frac{02}{100}$ *dollars* in the period of five years, and is not a very
318 bad business for a clerk who was glad to get employment at a salary of fifteen hundred dollars per annum.

This respondent admits that, without consulting the said complainant, he and the said William C. Mitchell, as surviving partners of the firm of N. Webb and Company have been removing the goods remaining at Franklin, Texas, and Fort Bliss, Texas, to the Territory of Arazoña, as they believe they had a right to do, for the reason that he was informed by Henry Cuniffe, the agent of this respondent and the said William C. Mitchell, as surviving partners, that said goods could not be sold at Franklin and Fort Bliss, Texas, at any price; and this respondent was informed and believes that said goods could be sold in Arazoña, and in fact now are sold and disposed of in that Territory. This respondent denies that the funds belonging to the said Nathan Webb are being used by said defendants or transferred by them out of the jurisdiction of this court, except such amount as may be necessary to enable
319 this respondent and the said William C. Mitchell, as surviving partners, to close up said business of said copartnership.

This respondent further denies that there is only a small stock of goods on hand at the store at Fort Union, or that the said defendants are using any portion of the funds belonging to the estate of the said Nathan Webb in taking contracts to supply the troops at Fort Union and other military posts in the Territory of New Mexico, or in various or any mining enterprises and speculations as stated in said bill.

This respondent cannot state what means the said complainant has, but he does state that he has always, and on all occasions, supplied the said complainant with sufficient funds for her personal use and benefit, whenever called upon for that purpose by the said complainant.

This defendant, having now answered the material allegations in the original bill filed herein, for answer to the allegations in what is
320 called the supplemental bill of said complainant, says that some time during the summer, in the month of August or September, 1868, upon application made by the complainant to this respondent for an examination of the books of said firm of W'm H. Moore & Co. and N. Webb & Co., and, upon said application, he did consent to allow the said complainant to appoint some one to examine the books of said firm jointly with a skilful book'eeper that said respondent then had employed in posting the books of said firm, and every facility was afforded said agent of said complainant to make all examinations of said books desired by him as such agent.

The said respondent denies that he promised said complainant that said books should be duly posted by the 25th day of December last, or that he would on that day make a settlement of the interest of her said husband in said business.

This respondent, by way of further answer herein, would state
321 to the court that the capital stock of the said firm of William H. Moore and Company, at the date of said copartnership with the

said Nathan Webb, amounted to forty-six thousand three hundred and eighty-two $\frac{30}{100}$ dollars, ($46,382.30,) and consisted of goods, wares, and merchandise then on hand and debts due said firm; and the said firm, at that date, was owing the sum of thirty thousand three hundred and thirty-seven $\frac{83}{100}$ dollars, leaving as the actual capital of said firm at its commencement the sum of sixteen thousand forty-four dollars and forty-seven cents, ($16,044.47,) all of which said capital was furnished by the said William C. Mitchell and this respondent, as the books of said company of W'm H. Moore & Co. will more fully show.

This respondent further states that it is impossible for him to state the exact amount of capital belonging to the firm of N. Webb & Co. at the death of said Webb, but it appears that the same consested
322 of debts due N. Webb & Co. on the books of said firm, a lot of merchandise on hand, and a tract of land situate in Doña Aña County, New Mexico, costing N. Webb & Co., as appears by said books, the sum of nine thousand six hundred and ninety-seven dollars and thirty-four cents, and purchased of the heirs of Hugh Stephenson.

This respondent further states that, after using the best exertions and the employment of the best and most skilful agent, he has been unable to realize out of the goods sold and debts collected but the sum of $30,793.06 *cents*, which said amount as collected has been passed to the credit of N. Webb & Co., in discharge of a portion of the debt due from N. Webb & Co. to the firm of William H. Moore & Co.

This respondent states that Exhibit "A," filed herein, shows the unpaid debts of the firm of N. Webb & Co. at the death of said N. Webb, amounting to the sum of $61,462.61, and the ostensible assets of said firm amounted to the sum of $85,802.37, which, in case all the
323 debts had been collected, would have given a profit to the business of N. Webb & Co. of $24,439.76, if the goods, wares, and merchandise on hand, at the death of said Nathan Webb, could have been sold at a fair price; but the said respondent states that the goods on hand had to be sold at a great loss, after much time, trouble, and expense in sending to a distant market, and the real estate above mentioned, as the Brazito tract, is not now worth exceeding four thousand dollars, having cost N. Webb & Co. the sum of $9,697.34.

This respondent further states that he has been informed and believes that a large portion of the debts due said N. Webb & Co. are worthless, and cannot be collected, on account of the insolvency of the parties owing said amounts.

This respondent, as a sample of worthless debts, the collection of which is past hope, refers the court to the following:

Nathan Webb, deceased, $23,293.09; Mrs. Gertrude E. Webb,
324 the complainant, $5,211.98; Joab Houghton, $3,208.45, making the sum of $31,713.52 drawn out of the assets of the firm of N. Webb & Co. by Nathan Webb in his life-time, and by the complainant since his death, and by Joab Houghton, the brother-in-law and agent of the said complainant, being a sum more than sufficient to exhaust all the profit of the said firm of N. Webb & Co., if all the debts due the firm could be collected, and if the good' remaining on hand could have been sold at cost.

This respondent would further state, on a full settlement of the business of the firm of N. Webb & Co., up to the present date, there has been a loss amounting to the sum of $35,019.70; and the said respondent asks that the said Nathan Webb, deceased, be charged with the sum of $11,673.25, one-third the amount of said loss on a final settle-

ment of the business of said firm of N. Webb & Co. and William H. Moore & Co.

This respondent would further state that said firm of N. Webb
325 & Co. was conducted by said Nathan Webb with much extravagance, and undue and excessive expense, as will be seen by reference to the expense-account on said books of N. Webb & Co., amounting to the sum of $15,311.81 from the establishment of the firm of N. Webb & Co. up to the death of the said Nathan Webb, when, in truth and in fact, said business might have been well conducted with one-half that amount of expenses.

This respondent would further state that the goods, wares, and merchandise of the firm of N. Webb & Co., at the death of Nathan Webb, were estimated at the sum of seventy-eight thousand nine hundred and $\frac{16}{100}$ dollars; but this estimate was based upon the original cost and freight on said goods, and upon a sale of said goods for the best price that could be had, and in the best market that could be found, said goods, wares, and merchandise only brought the sum of $28,982.06, credited, as above stated, on the books of W'm H. Moore & Co. to the firm of N. Webb & Co., in part payment of the indebtedness of the firm of N. Webb Co. to the firm of W'm H. Moore & Co.

326 This respondent further states that one of the said lots in El Paso, Texas, so purchased by said Nathan Webb with the funds of N. Webb & Co., is lot No. 109, in block No. 24, as found on the map of said town, as made by Anson Mills. The title to the same was made in the name of the complainant, and was occupied by the said Nathan Webb as his residence during his life-time, and is worth the said sum of $500 paid for the same.

This complainant would further state that said Nathan Webb in his life-time made with the funds of said N. Webb & Co. purchases of other houses and lots in said town of El Paso, for which he paid with the funds of N. Webb & Co. to the amount of about $2,000, and took the title-deeds for said purchases in his own name; but as said title-deeds are not in the possession of this respondent, he is unable to give the number and description of said lots, but asks to be permitted to prove said value and description of said property prior to the final
327 hearing of this case; and, upon the final hearing, the said William C. Mitchell and this respondent asks that the title to said lands and lots be decreed to them as the surviving partners of said firm of N. Webb & Co., in order that the said property, or the proceeds of the sale of the same may be applied to the payment of the outstanding unpaid debts of the said firm of N. Webb and Co., as justice to creditors takes precedence of generosity to partners in the closing of the business of a badly-managed and insolvent firm.

This respondent further states that all 'he debts of the firm of N. Webb & Co. have been fully paid and satisfied by the said W'm H. Moore & Co., except the debt due to the firm of W'm H. Moore & Co. by the said firm of N. Webb & Co., for the payment of which the said real estate, and all the assets of said estate of said Webb, deceased, are wholly insufficient; and this respondent and the said William C. Mitchell asks the court to convert into cash the said houses & lots, in order that the value thereof may be used by them in payment of the
328 debts yet unpaid of the firm of N. Webb & Co. This respondent would further state that the title to the lands situate in Doña Aña County, Territory of New Mexico, called the Brazito tract of land, was executed by Adelaide Zabriski and James A. Zabriski on the 20th day of May, 1868, for a one-sixth interest in a tract of land known as

Fort Fil'more, and more particularly as the Brazito tract of land, containing twenty-one thousand acres, situate in the county of Doña Aña, and conveyed by Hugh Stephenson to said Adeliade Zabriski, formerly Stephenson, by deed dated the 22d day of July, 1859, all of which will more fully appear by reference to copy of said deed, hereby made a part of this answer and marked Exhibit I herein. And also, on the 20th day of May, 1868, Benancia French and A. H. French, her husband, deeded to the same parties an undivided sixth interest in and to the same tract of land, as will more fully appear by reference to a copy of said deed, hereby made a part of this answer, marked as Exhibit
329 J herein. Also, about the same time, one Leonora Perez, daughter of the said Hugh Stephenson, executed a deed to and undivided sixth interest in and to the same tract of land, which said deed is lost or mislaid, and a certified copy of which, so soon as can be obtained, is asked to be made a part of this answer, marked as Exhibit K herein. This respondent would further state that the compensation paid for said lands was paid by the firm of N. Webb & Co., and with their funds; and the said Elizabeth Webb, meaning the complainant Gertrude E. Webb, did not pay one cent of the purchase-money mentioned in said deeds, as the books of N. Webb & Co. will show, and the said lands of right belong exclusively to this respondent and the said William C. Mitchell, as the surviving partners of the firm of N. Webb & Co.

This respondent and the said William C. Mitchell would further state that, on the 16th day of October, 1866, the capital stock of the firm of William H. Moore & Co. amounted to about the sum of $285,834.73 as appears by the books of said company, consisting of goods,
330 wares, and merchandise on hand, debts due and owing to said firm, the store-house at Fort Union, and the undivided half of the mill on the Mora, in Mora County, and a train of thirty-one wagons, with two hundred and eighty mules. This respondent would further state that since the last term of this court, to wit, on the 26th day of May, 1869, mules to the number of two hundred and fifteen were, in open daylight, within a mile of Sheridan, Kansas, stolen, taken, and driven away by a party of Indians belonging to the tribe called Cheyennes, and only sixty of said mules had been recaptured from said Indians, leaving the number of mules so stolen and hopelessly lost one hundred and fifty-five mules of the value of two hundred dollars each per head, making the total loss amount to the sum of thirty-one thousand dollars, which said sum is to be deducted from the available means of W'm H. Moore & Co. since the filing of the amended answer herein on the 24th day of March, 1869.

331 This respondent would further state that the said William H. Moore & Co. are the owners of an undivided half interest in the mill and mill property situate in Mora County, New Mexico, on the Mora River, a short distance below the junction of the rivers Mora and Sapello, which said mill property is owned jointly with one William Kronig; and said half interest in said mill and mill property has cost the said W'm H. Moore & Co. the sum of about $7,500, and which said half interest in said property is reasonably worth what it cost the said William H. Moore and Co.

This respondent further states that the title to the land on which said mill is situate was, on the 15th day of August, 1857, confirmed to John Scolly, Augustin Duran, Guillermo Smith, Santiago Giddings, Gregorio Frigillo, and Francisco Romero; and subsequently, by act of Congress passed 21 June, 1860, confirmed to the extent of five square leagues; and which said property for many years has been and still is in the pos-

session of William Kronig, and claimed by him as the purchaser of the original grantees, their heirs and vendees.

332 This respondent would further state that the said mill property has no lands attached to the same, except such as the mill buildings occupy and cover, with a right of entry and exit over the said lands of said William Kronig.

This respondent would further state that the store-house and buildings connected therewith belonging to the firm of W'm H. Moore & Co., at Fort Union, Mora County, New Mexico, and located upon the military reservation of the United States known as Fort Union, Mora County, New Mexico; and said buildings were erected with the permission of the commander of said post of Fort Union, for the use of said William H. Moore & Co., as a suttler's store, and cost said W'm H. Moore & Co. the sum of $4,644.40.

This respondent would further state that, having no title to the land on which said buildings are placed when the business of W'm H. Moore & Co., at Fort Union, shall cease as mercha'ts, sutlers, and post traders, they expect said store-houses and buildings will be a total loss to the firm of W'm H. Moore & Co. This respondent would further state that when, on the 2d day of July, 1866, Charles W. Adams was ad-

333 mitted into the firm of W'm H. Moore & Co. said store-houses and buildings, having been improved and having increased in value, were turned into the firm of W'm H. Moore, Adams & Co., at the sum of 8,000$, and upon the retirement of the said Charles W. Adams from said firm on the 1st day of July, 1867, his entire interest was purchased in the firm of W'm H. Moore, Adams & Co., by W'm H. Moore & Co., for the sum of fourteen thousand dollars.

Said defendant, and the said W'm C. Mitchell, would further state that, by reference to Exhibit "A," filed herein on the 24th day of March, 1869, it will be seen that the firm of N. Webb & Co. was in debt to the amount of $61,462.61, and that there was due and owing said firm the sum of $76,105.03, which sum, if it could have been collected, would have paid all the debts and have left a surplus profit; but said respondent states that, after the sale of all the goods on hand at the death of the said N. Webb, in the best market to be found and for the best price that could be obtained, said goods only brought the aum of $28,982.06, which sum was paid over to W'm H. Moore & Co. in liquidation

334 of a part of the indebtedness of N. Webb & Co. to W'm H. Moore & Co., for goods, wares, and merchandise furnished said N. Webb & Co., to do business upon, by the said W'm H. Moore and Company.

This respondent would further state that since the filing of his amended answer herein on the 24th day of March, 1869, in which it is stated that about $20,000 had been received for sale of goods, the further sum of $8,982.06 *cents* had been received on account of sale of all the remaining goods of N. Webb & Co. sent to Arazoña; and the further sum of $1,811 has been received on account of collections made of debts due N. Webb & Co. since last court, making in all collected and received since the death of N. Webb the sum of $30,793, all of which will appear by the books to be passed to the credit of N. Webb & Co. on the books of W'm H. Moore & Co. in part payment of the debt due them.

This respondent further states that there is still due to the said William H. Moore & Co., from N. Webb & Co., the sum of $35,019.70, as shown by the books, and all the available assets which have come to the hands of the said respondents and the said William C. Mitch-

335 ell, as surviving partners of the firm of N. Webb & Co., have been collected and used in the payment of the debts of said N. Webb & Co.

This respondent further states that the uncollected debts of the firm of N. Webb & Co., as set forth in said Exhibit "A," are for the most part entirely worthless, disputed, and in litigation; and the said respondent, from the best information and belief upon the subject, does not hope to be able, in the future, to collect over three thousand dollars of the amount of said debts.

This respondent, as a specimen of said debts, herewith files the account of Nathan Webb, deceased, with N. Webb & Co. for the sum of $23,130.59, marked as Exhibit D herein; also the account of Mrs. Gertrude E. Webb, said complainant, for the sum of $5,211.98 *cents*, marked as Exhibit E herein; also the account of Joab Houghton, brother-in-law and temporary administrator, in the of $3,208.45, marked as Exhibit F herein.

This respondent, as a further evidence of the worthlessness of said accounts, call' the attention of the court to the expense-account set fo*u*rth in Exhibit "A," amounting to $15,311.81; the train-ac-
336 count, $4,571.66; and the account of A. G. Gage, for $1,289.29, who is dead, and his estate utterly insolvent and worthless.

The said respondent further states that the actual unpaid indebtedness of the firm of N. Webb & Co., as shown by the books of said firm, is $35,019.70, and said amount is due the firm of W'm H. Moore & Co., making the loss on the business of N. Webb & Co. the sum of $35,019.70.

The said respondent would further state that said Nathan Webb, deceased, as a partner in the firm of N. Webb & Co., is responsible for one-third of the loss of $35,019.70, and one-third of said loss, amounting to the sum of $11,673.23; the said estate of the said Nathan Webb, deceased, is indebted to said William H. Moore and William C. Mitchell, as the surviving partners of the firm of N. Webb & Co. and of the firm of William H. Moore & Co., and for said sum the said respondent and the said William C. Mitchell ask that said administratrix of said Nathan Webb be decreed to pay to the said respondent and
337 said William C. Mitchell, as surviving partners of the firm of N. Webb & Co., to enable them to pay off and liquidate the said indebtedness of said firm of N. Webb & Co. to the firm of W'm H. Moore & Co.

This respondent, by way of explanation of Exhibit C, filed with the bill of said complainant under date of June 15th, 1863, would state to the court that, at the time that balance-sheet was made, the only available means of said firm of W'm H. Moore & Co. was goods to the value of $25,000; cash on hand, $7,647.21; $21,063.12 due on the petty ledger, and $177,011.77 due said firm on its books, making in all the sum of $230,732.10, and out of these means *in* indebtedness of said firm, amounting to $122,808.02, had to be paid, which only left in the hands of said firm of W'm H. Moore & Co. the sum of $107,914.08 for business operations, and that not in money but unpaid debts, much of which amount still remains unpaid.

This respondent would further state that, in estimating the capital stock of said firm, in June, 1863, at $191,513.09, there was included in said estimate $16,044.47 due the old firm of Moore & Mitchell,
338 and the $177,011.77 of unpaid debts due to said firm of W'm H. Moore & Co. were estimated as good, and those amounts, together with $7,647.21, cash, and $113,617.66, estimated profits, constituted the entire means of said company, amounting to $314,321.11 *cents*, from which was deducted the debts due and owing by said firm, amounting to the sum of $113,617.66; and it left the apparent balance

of a capital stock of $191,513.09, but from this amount was to be deducted the said sum of $16,044.47 due the old firm, and such sums of the debts due to said firm of W'm H. Moore & Co. as could not be collected, which, this respondent avers, was a large amount that was not and could not be collected. This respondent would further state that, upon closing the books of W'm H. Moore & Co., on the 2nd day of July, 1866, and the opening the books at the same time of W'm H. Moore, Adams & Co., a large amount of the debts which appear to have been collected by Exhibit B, filed herein, on the 24th day of March, 1869, were not, in fact, collected, but only transferred from the books of William H. Moore & Co. to the books of W'm H. Moore, Adams &
339 Co., and many of said debts are still unpaid and uncollected.

This respondent would further state that the said Nathan Webb, in his lifetime, in addition to the $23,139.59 *cents*, by him drawn out of the business of N. Webb & Co. for his own private use and benefit, he, the said Nathan Webb, between the 6th day of September, 1866, and the 30th day of October, 1867, drew out of the firm of W'm H. Moore, Adams and Company the sum of $965.80, and between the 5th day of June, 1861, and the 1st day of May, 1867, the said Nathan Webb drew out of the business of W'm H. Moore & Co. the further sum of 3,716.61, making in all the sum of $4,682.41, as will more fully appear by reference to a copy of said accounts hereby made a part of this answer and marked as Exhibit G herein. This respondent would further state that of the train of wagons and mules on hand 24th of March, 1869, when the amended answer was filed, there now remains only one hundred and two mules, and all the residue have been stolen by the Cheyenne Indians, or lost by accident or disease, and three of the wagons after
340 the loss of the mules at Sheridan, were sold for $150 each, making 450.

This respondent would further state that, by reference to Exhibit B filed herein at the last term of court, it will be seen that debts of the firm of W'm H. Moore & Company had been collected, amounting to the sum of $29,292.89; and that William H. Moore & Co. had paid out in liquidation of debts the firm of W'm H. Moore & Co. were owing the sum of $190,361.38 *cents*.

This respondent would further state that it will be seen by reference to Exhibit C filed herein at last court that the debts due the firm of W'm H. Moore & Co., at the death of N. Webb, amounted to the sum of $322,958.77, and since last term of court W'm H. Moore & Co. have collected the further sum of $15,528.90, leaving still debts due and to be collected the sum of $307,429.87, out of which amount, when collected, is to be paid the sum of $54,095.14 *cents* yet due and owing by W'm H. Moore & Co., as appears by Exhibit C filed herein at last court, which, when all the debts are paid of W'm H. Moore & Co., would leave debts due and owing to W'm H. Moore and Company the
341 sum of $253,334.73, and to this amount must be added train of wagons and mules worth about $25,000.00, and the half interest of W'm H. Moore & Co. in the mill property, worth $7,500.00, which makes in all the sum of $285,834.73.

This respondent would further state that of said indebtedness to said firm of W'm H. Moore & Company of $307,429.87 there is owing by insolvent, absent, and dead parties, which cannot be collected, at the lowest estimate, the sum of $100,000, which amount, deducted from the $285,834.73, would leave as the probable net profit of the business of W'm H. Moore & Co., from the time Nathan Webb entered said firm until his death, the sum of $185,834.73, and would, when turned into

cash, give the said Nathan Webb's representatives and legal heirs the sum of $23,229.34 as his portion of the profits in said business, subject to be slightly increased or diminished in proportion to the success of said William H. Moore and William C. Mitchell, surviving partners of the firm of W'm H. Moore & Co., in the further collection of the debts due said firm, estimated to be worthless.

342 This respondent would further state that, since the death of the said Nathan Webb, the said complainant has drawn out and received from the firm of N. Webb and Company the sum of $5,211.98, as appears by copy of her account hereby made on exhibit herein marked (E,) and has been paid by the said William H. Moore and William C. Mitchell as surviving partners of the firm of W'm H. Moore & Co. the further sum of $11,441.00, making in all paid to the said complainant the sum of $16,652.98, and a copy of the said accounts are hereby filed, marked as Exhibit H herein.

This respondent would further state that the machinery for a steam-mill belonging to N. Webb & Co., and unsold 24th March, 1869, when the amended answer was filed, has since been sold for the sum of 2,000$, and the amount is included in the cash receipts credited above since last court.

This respondent would further state that, at the last term of this court, in the amended answer of this respondent, the court was informed of the fact that Sarah Webb, the mother of said Nathan Webb,

343 deceased, was living, interested in the settlement of said estate of her deceased son, Nathan Webb, and a necessary party in this case, and this respondent now states that said Sarah Webb is a resident of Burlington, in the State of Iowa, and said respondents now again ask that said Sarah Webb be made a party to this suit, and required to answer herein or disclaim all interest in or claim to any portion of the estate of her deceased son, Nathan Webb.

This respondent would further state that, at the time said Nathan Webb was admitted into said firm as a partner with an eighth interest, the said William H. Moore was the regularly appointed sutler at said post of Fort Union, and had the exclusive right to trade at that post; and the admission of the said Nathan Webb into partnership as aforesaid was not because of his capital or business habits, but as an act of favor to a former clerk in the employ of the said respondent, to whom he was much attached.

This respondent further states that the facts set fourth in the foregoing answer and exhibits are taken from the books of said firm of

344 N. Webb & Co. and W'm H. Moore & Co., and are as full and explicit and certain as the unsettled condition of the business will enable the best and most careful book-keeper to make them. This respondent would *would* further state that the books of N. Webb and Co. are at all times open to the fullest inspection of the said complainant, her attorn*ies*, or any suitable and competent agent selected by the said complainant at any and all times.

This respondent would further state that the books of W'm H. Moore & Co., and W'm H. Moore, Adams and Company are in daily use at their store-house at Fort Union, and cannot, without great inconvenience and detriment, be spared from the office, but are freely open to the inspection of the complainant, her attorn*ies*, or a competent book-keeper and accountant, at all times when not in actual use.

The said respondent, having answered all the material allegations in said complainant's bill and supplemental bill, upon a final hearing of this case, asks that said bill be dismissed for want of equity, and that

the said respondent receive of said complainant his costs and
345 charges in this behalf laid out and expended.

All of which is respectfully submitted to the court.

WILLIAM H. MOORE,
By Clever and Watts, Att'ys.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

William H. Moore, upon his oath, states that the matters and things set forth, stated, and contained in the above answer, so far as stated from his own knowledge, are true in substance and in fact; and so far as stated from the information of others, he believes them to be true.

W. H. MOORE.

Subscribed and sworn to before me this 18th day of August, 1869.

J. G. PALEN, *C. J., &c.*

And thereupon the entry made in this case at the last term of this court herein was then read to the court in the words and figures following, to wit:

11th day.—Friday, April 2nd, 1869.

GERTRUDE E. WEBB
vs.
WILLIAM H. MOORE & CO. } Bill in chancery.

And now come the parties, by their solicitors, and the complain-
346 ants now file their exceptions to the amended answer of William H. Moore, and the exceptions are now confessed by the said counsel of the said defendant, and by agreement of the parties herein, leave is granted to the complainant to amend her bill herein within fifty days from this date; and the defendant has leave to amend his answer within seventy-five days from this date, and either have leave to take evidence herein, on giving ten days' notice after the said amended answer is filed; and this cause stands continued, and publication of the pendency of this suit is ordered to be made as to Sarah Webb, mother of Nathan Webb, deceased, upon the making of her a party herein by the complainant. And thereupon said motion was fully argued by counsel on both sides, and submitted to the court for decision, and the court being sufficiently advised in the premises, now overrules said motion, to which opinion of the court, in overruling said motion, the defendants, by their attorn*ies*, except, and ask that this bill of exceptions may be signed and sealed by the court, and made a part of the record herein, which is done accordingly this 21st day of August, A. D. 1869.

J. G. PALEN, *C. J., &c.*

On which bill of exceptions is the following endorsements, to wit:

GERTRUDE E. WEBB
vs.
WILLIAM H. MOORE. } William C. Mitchell. Chancery.

GERTRUDE E. HUNTINGTON
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Vol. 2, pages to

347 *Bill of exceptions.—Filed in open court this 21st day of August, 1869.*—W'M BREEDEN, *Clerk.*

And be it further remembered that afterwards, to wit, on the 27th day of September, A. D. 1869, the following motion was filed in the clerk's office of the first judicial district court of the Territory of New Mexico, which said motion is in the words and figures following, to wit:

GERTRUDE E. WEBB, ADM'X, &C., *vs.* W. H. MOORE ET AL. } In chancery.

Complainant, by her solicitor, S. B. Elkins, moves the court for a rule on the defendants for the payment of one thousand dollars ($1,000) to her, for reasons stated in affidavit filed herewith.

S. B. ELKINS,
Sol. for Comp.

On which said motion is the following endorsement, to wit:

348 Gertrude E. Webb vs. W. H. Moore et al. Motion filed in my office this 27th day of September, 1869. W'm Breeden, clerk.

And at the same time, and in support of the foregoing motion, the following affidavits of G. E. Webb, W. R. Shoemaker, and J. Houghton were filed, which said affidavits are in the words and figures following, to wit:

GERTRUDE E. WEBB, ADM'X OF THE ESTATE of Nathan Webb, dec'd, *vs.* WILLIAM H. MOORE & WILLIAM C. MITCHELL. } In chancery.

Gertrude E. Webb, the complainant in this cause, makes oath and says that she is in great need of money as means of actual support; that she now is and has been for several months past confined to her bed by sickness; that she has no other means of support and
349 maint*ai*nance, except what pertains to the estate of her deceased husband, late a partner in the firm of W. H. Moore & Co., and which is now in the hands of William H. Moore and William C. Mitchell, the surviving partners of said firm; of which means the said William H. Moore, senior partner of said firm, refuses to pay any portion whatever to this affiant for her support and maint*ai*nance; that this affiant, as administratrix of the estate of the said deceased partner, Nathan Webb, drew a draft of the said firm of W. H. Moore & Co. for the sum of one thousand dollars, a sum necessary of her immediate support, which draft was duly presented, and both acceptance and payment refused by the said senior partner, William H. Moore, who permitted the same to go to protest, thus leaving this affiant utterly without means of support. Deponent makes this affidavit for the purpose of obtaining such immediate relief in the premises as she is informed can only be obtained and properly granted in a court of chancery.

GERTRUDE E. WEBB.

350 Sworn to and subscribed before me this fourteenth day of August, one thousand eight hundred and sixty-nine.

[SEAL.] W'M BREEDEN, *Clerk*,
By M. A. BREEDEN, *Dep't Clerk.*

On which said affidavit is the following endorsement, to wit:

GERTRUDE E. WEBB, ADM'X,
vs. In chancery.
W'M H. MOORE & W'M C. MITCHELL.

Affidavit of G. E. Webb.—Filed in my office this 27th day of September, 1869.—W'M BREEDEN, *Clerk.*

And at the same time, and with the foregoing affidavit was filed the following protest of draft, which said protest is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

On the 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, at the request of John C. Dent, esq'r, of
351 Fort Union, N. M., I, Thomas O. Bryan, a notary public duly admitted and sworn, dwelling in Fort Union, county of Mora, and Territory of New Mexico, did present the original "sight-draft," a copy of which is hereunto attached, at the store of W. H. Moore & Co., the drawees thereof, in Fort Union, county and Territory aforesaid, to H. V. Harris, esq'r, (a book-keeper, cashier, or other recognized business agent of the said W. H. Moore & Co.,) and demanded payment of the same, which was refused, the said Mr. H. V. Harris replying that Mr. W. H. Moore would not accept or pay it. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawees of the said sight-draft, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred and to be hereafter incurred, for want of non-payment of said "sight-draft."

This done and protested in Fort Union aforesaid, in presence
352 of J. H. Mulgrove and Hugh Masterson. In testimonium veritatis.

[SEAL.] THOMAS O. BRYAN,
Notary Public.

Witness—
J. H. MULGROVE.
HUGH MASTERSON.

[25 c. int. rev. stamp, cancelled.]

"Copy.

"$1000.] "SANTA FÉ., N. M., *June* 22, 1869.

"One day after sight pay to the order of John C. Dent, esq'r, one thousand dollars, and charge to the account of the undersigned.

(S'gned) "G. E. WEBB,
"*Adm'x Estate of N. Webb, dec'd.*

"W. H. MOORE & CO.,
"*Fort Union, New Mexico.*"

[50 c. rev. stamp.]

And said sight-draft did and does bear the following endorsement on its back:

"JOHN C. DENT."

A true copy from the original.
[SEAL.] THOMAS O. BRYAN,
Notary Public.

353 On which said protest is the following endorsement, to wit:

Gertrude E. Webb, adm'x, vs. W. H. Moore & W. C. Mitchell. Protest of draft. Filed in my office this 27th day of September, 1869. W'm Breeden, clerk.

GERTRUDE E. WEBB, ADM'X OF ESTATE OF N. Webb, dec'd, *vs.* W. H. MOORE & W. C. MITCHELL. } In chancery.

This affiant, W. R. Shoemaker, makes oath and says, that in the month of October, 1866, upon hearing of the death of Nathan Webb, he, at the request of Gertrude E. Webb, had conversation with W. H. Moore, in which conversation said Moore expressed the wish that said Gertrude E. Webb should continue to hold the same interest in the firms of W. H. Moore & Co. and N. Webb & Co., as had been
354 held by said N. Webb before his death; said Moore desired that said Gertrude E. Webb should continue as one of the firms until the month of July, 1867, at which time he, said Moore, as the senior partner of said firm, would make settlement with said Gertrude E. Webb, so far as the business at Fort Union was concerned, and allow said Gertrude E. Webb to withdraw her interest from that branch of the firm. No settlement was made, as proposed by said Moore, at the date above mentioned.

Affiant further states, that in the month of August, 1868, said G. E. Webb made preperations to bring suit in the district court of Mora County, N. M., to compel said Moore to make settlement with her, upon which said Moore, in an interview with said G. E. Webb, in presence of affiant and of others, agreed that if said G. E. Webb would not bring suit, that he would allow her to continue her interest in the firm, as he had just agreed, until he could have the books of the two firms,
355 i. e., that at Fort Union and Franklin, Texas, posted and the assets of all the business made out.

Affiant further states that, in frequent interviews had with said Moore, at the request of said G. E. Webb, Moore told affiant that G. E. Webb should at all times, until he could make settlement with her, draw, in cash or merchandize, whatever she needed for her use and current expenses, or words to that effect.

W. R. SHOEMAKER.

Subscribed and sworn to before me this 27th day of September, A. D. 1869.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

Gertrude E. Webb, adm'x, vs. W. H. Moore & W. C. Mitchell. In chancery. Affidavit of W. R. Shoemaker. Filed in my office this 27th day of September, 1869. W'm Breeden, clerk.

GERTRUDE E. WEBB, ADM'X OF ESTATE OF N. Webb, dec'd, *vs.* W. H. MOORE & W. C. MITCHELL. } In chancery.

356 This affiant, Joab Houghton, makes oath and says, that on the

twentieth day of October, eighteen hundred and sixty-six, letters of administration were issued to him, in accordance with laws of the State of Texas, appointing this affiant administrator pro tem. and custodian of the estate of Nathan Webb, deceased, late a partner of the firms of N. Webb & Co., of El Paso, Texas, and W. H. Moore & Co., of Fort Union, New Mexico, which said firms were composed of William H. Moore, William C. Mitchell, and the said Nathan Webb; that by virtue of the power and authority in him vested by the said letters of administration, this affiant took charge of all the property in El Paso County, Texas, belonging to the aforesaid firms of N. Webb & Co. and W. H. Moore & Co., together with the books of account, papers, and moneys of the said firms; that he caused to be made a list of all papers of value found in the safes in the counting-room or elsewhere
357. about the premises of the suttler's store of the said firms at Fort Bliss, El Paso County aforesaid; that he also caused the moneys found in the said safes to be counted, a cash account opened, and the amount of cash found on hand entered therein, which said cash-account continued to be carefully kept and all receipts and expenditures entered therein, during the time affiant continued to act as administrator pro tem. and custodian of said property.

This affiant does not recollect the exact amount of cash on hand, at the time the said William H. Moore, as surviving partner, took possession of the said books of account, papers, and moneys of said firm, on or about the 10th day of December, 1866, but believes the amount to have been from two thousand to three thousand dollars. The said cash account, now in the possession of the said W. H. Moore & Co., will conclusively show that affiant found with the papers, of which he caused a list
358 to be made as aforesaid, Government vouchers, given for military supplies previously furnished by the said firm at Fort Bliss, Texas, to about the amount of sixteen thousand ($16,000) dollars, which affiant permitted to remain uncollected till the arrival of the said W'm H. Moore and the widow of the deceased partner, Nathan Webb. The acting commissary of subsistence and quartermaster of Fort Bliss refused to pay the said vouchers to W'm H. Moore unless the same were receipted by an administrator of his deceased partner, Nathan Webb.

At her own request, and at the request of W'm H. Moore, affiant aided the widow of the deceased partner, Gertrude E. Webb, in obtaining letters of administration on the estate of her deceased husband, which letters were granted to her by the county court of El Paso County, Texas, on the seventeenth day of December, 1866; that soon after the issuing of the said letters of administration, Gertrude E. Webb, as administratrix of Nathan Webb, deceased, signed the said vouchers with the
359 said W'm H. Moore, and the said W'm H. Moore received the money therefor, to wit: ($16,000) sixteen thousand dollars, as this affiant was informed by W'm H. Moore and Gertrude E. Webb, adm'x.

This affiant, upon his oath, further declares that on or about the twenty-fourth day of December, 1866, at Franklin, El Paso County, Texas, *that* said W. H. Moore informed this affiant that he had sold a portion of a train of wagons and mules belonging to the firm of N. Webb & Co., for upwards of eight thousand ($8,000) dollars, and showed affiant a draft then in his, Moore's, possession, drawn on parties in New Orleans for the sum of eight thousand dollars and upwards.

J. HOUGHTON.

Sworn to and subscribed before me this 27th day of September, A. D. 1869.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement:

360 G. E. Webb, adm'x of estate of N. Webb, deceased, vs. W. H. Moore & W. C. Mitchell. In chancery. Affidavit of J. Houghton. Filed in my office this 27th day of September, 1869. W'm Breeden, clerk.

And afterwards, to wit, on the 1st day of October, A. D. 1869, and in opposition to the foregoing motion for the payment to said complainant of one thousand dollars, the following affidavits of H. V. Harris, and W. H. Moore, were filed, which said affidavits are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Santa Fé:

I, H. V. Harris, a resident of Fort Union, New Mexico, upon my oath, state that I am the identical H. V. Harris mentioned in the protest of draft by Thomas O. Bryan, notary public, as book-keeper and
306 cashier of W. H. Moore & Co., merchants at Fort Union. I further state that I have carefully examined the draft on file in this case along with said protest, and I further state that no such draft was presented to me for payment. I further state that the draft presented was in the handwriting of Mrs. G. E. Webb, and of the same date and amount, but was payable to "M. C. Dent, esq.," and without any revenue stamp upon it of any kind. And the draft now filed is made payable to John C. Dent, and has upon it a fifty cent revenue stamp, purporting to have been cancelled by Mrs. Webb, June 22d, 1869. I further state that as such book-keeper of W. H. Moore & Co., I have carefully examined the books of W. H. Moore & Co., W. H. Moore, Adams & Co., and N. Webb & Co., and I have also carefully examined the affidavit of W. H. Moore, made herein under date of September 29th, 1869, and the statements in said affidavit as to the entries in said books are correct and true. I further state that I have always given the firm of
362 N. Webb & Co. credit on the books of W. H. Moore, Adams & Co., and of W. H. Moore & Co., for all sums to which said firm was entitled to credit, so far as known to me. I further state that the books of W. H. Moore & Co. do not show that any capital was ever furnished to said firm by the said Nathan Webb, deceased. I further state that during all the time I have had charge of the books and papers of W. H. Moore & Co. I have never seen any written articles of co-partnership between the said William H. Moore and William C. Mitchell and Nathan Webb, deceased. Nor did I ever hear either of them state that any such did or ever had existed between them. And I further state that the exhibits filed with the answer of said W. H. Moore are correct copies taken from the books of said firm of N. Webb & Co., W. H. Moore, Adams & Co., and W. H. Moore & Co., and further saith not.

H. V. HARRIS.

363 Subscribed and sworn to before me this 1st day of October, A. D. 1869.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

Gertrude E. Webb vs. W'm H. Moore & W'm C. Mitchell. Affidavit

of H. V. Harris. Filed in my office this 1st day of October, 1869. W'm Breeden, clerk.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora.

William H. Moore, one of the defendants in the case of Gertrude E. Webb, administratr'x of Nathan Webb, deceased, now pending in the United States district court for the 1st judicial district, Mora County, Territory of New Mexico, upon his oath, states in reply to the affidavits of Gertrude E. Webb, W. R. Shoemaker, and John Houghton, filed herein, that the sickness or great need of means for actual support, even
364 if true as stated, does not cast upon the firm of W. H. Moore & Co. any legal liability to maintain and support said complainant all her life, as the said firm has been doing for the last eight years past, both during the life-time of her husband Nathan Webb, and since his decease, as the exhibits now on file and numbered D, E, H, G, and F, will fully show. Said affiant further states that said exhibits, with the answer of said defendant, show what the said Nathan Webb in his life-time, the said Gertrude E. Webb since his death, as administrat'rx, and Joab Houghton, as administrator of Nathan Webb, the sum of $42,992.02, have drawn out of said business. And the said affiant further states that said accounts are correctly taken from the books and are just and true.

Said affiant further states that it is utterly false and untrue, as alleged in the bill of said complainant, that said Nathan Webb ever put
365 $15,000 capital in the business of W. H. Moore & Co. And said affiant states the fact to be that said Nathan Webb, neither at the time he entered into the firm of W. H. Moore & Co., nor at any other time ever contributed one single dollar of capital to the business of said firm.

Said affiant further state' that said Webb and said complainant had no money or property at the date of said marriage, and during all the time of marriage, and since the death of her said husband, the said complainant has been wholly supplied with the money and means of the said firm of W. H. Moore & Co., and N. Webb & Co. And said affiant further states that on examination of the said accounts contained in the exhibits above referred to it will be seen that others of her relatives have been assisted with means of support to the extent of several thousand dollars. Said affiant further states, that there has been actually paid to the said complainant, and at her request, and for her
366 benefit, the sum of $16,652.98, being over $5,000 per annum, since the death of Webb, and if a solitary woman, without children, and with a good house well furnished, cannot keep herself from want on that amount, the entire establishment of W. H. Moore & Co. would be in a short time inadequate to satisfy her necessities, and that of her relatives, friends, and attorneys. This affiant would further state that it will be seen by reference to the answer filed herein, and the exhibits filed with it, that Nathan Webb in his life-time, and the complainant since his death, have already drawn out of the business of W. H. Moore & Co. & N. Webb & Co. thousands of dollars over and above what was due the said Nathan Webb, as his rightful portion of the profits in said business. This affiant further states that he did promise to supply her, the said complainant, with such amount of goods and money as would be necessary for her use until a settlement of the business
367 of N. Webb & Co. could be made, and the true interest of her husband, Nathan Webb, ascertained and determined by the books

of said firms. And this affiant avers that said exhibits will show that the said complainant has been furnished over $5,000 per annum in money and goods, which ought to be sufficient to satisfy the wants of a reasonable woman these hard times.

Said affiant would further state that said statement was made prior to an examination of the books of N. Webb & Co., and at a time when it was supposed that the business of N. Webb & Co. would be wound up at a small profit, but on actual closing up of the business of N. Webb & Co., it was found that, by reason of the neglect & mismanagement of N. Webb, in his life time, dullness of business, bad debts, and the heavy amounts drawn out of said business of N. Webb & Co., in his life time, by N. Webb, and by the said complainant since his death, and the said Joab Houghton, that the firm of N. Webb & Co.
368 was insolvent to the amount of $35,019.70, and that the loss has to be borne by W. H. Moore & Co.; said affiant further states that the books of W. H. Moore & Co. show the amount of money turned over by Joab Houghton, temporary administrator, and what disposition was made of it, but they do not show, nor has the said affiant been able to find out from any source, to what business of said firms the sum of $2,870.00 taken out of said money of said firm of N. Webb & Co. was appropriated by the said Joab Houghton, nor does said affidavit enlighten him on that subject.

Said affiant further states that it will appear by reference to the cross-bill filed in this case, that the said complainant is in occupancy of a comfortable dwelling-house in El Paso, Texas, and that the said Joab Houghton also is in the occupancy and claims for himself and wife a large and commodious dwelling in El Paso, Texas, both of which pieces of property were purchased with the funds of N. Webb & Co. and
369 rightfully belong to the assets of said firm for the payment of debts due from said firm after the application to that end of all the personal estate of said firm.

Said affiant further states that his promise to support said complainant until a settlement was made, as set forth in the affidavit of said W. R. Shoemaker, related to the business of N. Webb & Co., and was faithfully complied with by said affiant until said complainant thought it best for her interests to sue the said defendants, and harass them with an unjust demand, and after the violation of said understanding upon the part of said complainant by bringing suit in court to settle said estate. The said affiant considers said understanding as extinguished and annulled by the action of the said complainant, and no longer binding on him.

Said affiant further states that while he was willing and disposed to pay several thousand dollars to the complainant, to which she was not legally entitled, to avoid being harassed and annoyed with a
370 lawsuit, and after having done so in good faith, this defendant is unwilling to have any further sum extorted from him prior to the final establishment of his indebtedness in the final hearing of this cause.

The said affiant denies that he is indebted, or that the firm of N. Webb & Co., or W. H. Moore & Co., is indebted to the said complainant a single dollar, and to take money away from said defendants and donate it to the said complainant might possibly be insisted upon under the plea of charity, but the said affiant does not believe it would be either justice or equity.

Said affiant further states that the accounts of said complainant will show that she has been paid since her bill was sworn to in this case the sum of fifteen hundred dollars in cash, five hundred of which was

paid to her attorney, and the residue ought to be sufficient to pay the board of one woman for one year, without subjecting her to any very great want or pressing necessity for more money.

Said affiant further states that, until it is shown in conformity
371 with law, that said defendants are indebted to said complainant, the said defendants protest against being compelled to pay the unauthorized drafts of complainant upon them, when she has already been largely overpaid all that is due her for the interest in the business of N. Webb & Co., and W. H. Moore & Co., of her deceased husband, Nathan Webb.

Said affiant would further state that, in explanation of a copy of a letter filed herein to F. M. Jennings, *that* the question of the interest of the mother of N. Webb in his estate had been made in court, and permission had been given said complainant to amend her bill with the view to make the said mother a party, and the said affiant was anxious to have the interest protected of the said mother, if anything was due N. Webb's estate on final settlement, and in order that the wishes of said mother might be known said letter was written.

Said affiant further states that said complainant wrote and
372 sent the said Sarah Webb a disclaimer of all interest in the estate of N. Webb, deceased, and wrote said mother a pressing letter to execute said disclaimer, which said Sarah Webb declined to do, and placed the management of her interest in the hands of John A. Stein, att'y at law, of La Fayette, Indiana, who prepared her answer and forwarded it to John S. Watts, attorney, to file in this case, with a view of assisting and protecting her rights, and also the unsigned disclaimer, which said answer and disclaimer are hereby shown to the court, marked as Exhibit No. 1 & 2 herein.

Said affiant would further state, that said voucher for $16,000.00, alluded to in the affidavit of Joab Houghton, was for flour, one-half of which belonged to Henry J. Cuniffe, and the remaining half belonged to the firm of N. Webb & Co., and was passed to the credit of N. Webb & Co. on the books of W. H. Moore & Co. in part payment of indebtedness of the firm of N. Webb & Co. to W. H. Moore & Co.; said
373 affiant states that said sum of money received on said vouchers, and in cash by him amounted to the sum of $10,258.75 and no more, and was by this affiant, on the 24th day of December, 1866, charged on page 628 of the day-book of N. Webb & Co. to W. H. Moore, & Co., and on the arrival of said affiant at Fort Union, N. M., on the 8th day of January, 1867, said sum of $10,258.75 was passed to the credit of N. Webb & Co., on page 275, in the day-book of W. H. Moore, Adams & Co., as will more fully appear by reference to said books, now produced to the court for its inspection.

Said affiant further states, that the sum of $8,166.72, received for the mules alluded to in the affidavit of Joab Houghton, is accounted for and credited October 30, 1867, to N. Webb & Co., on page 288 of the day-book of W. H. Moore & Co.

Said affiant further state', that all statements or insinuations made by affidavit or otherwise, that he has not fully accounted for all property, goods, cash, and vouchers belonging to the firm of N. Webb &
374 Co., since the same has come to his hands as one of the surviving partners of the firm of N. Webb & Co., are wholly false and unfounded. And further sayeth not.

W. H. MOORE.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

Personally appeared before me, the undersigned, a notary public in and for Mora County, Territory of New Mexico, W. H. Moore, to me personally known, and in my presence signed the above affidavit, and was in my presence by me duly sworn to the truth of the same.

Witness my hand and notarial seal this 29th day of September, A. D. 1869.

[SEAL.] HENRY G. BROWN,
Notary Public.

On which said affidavit is the following endorsement, to wit:

Gertrude E. Webb vs. W'm H. Moore & W. C. Mitchell. Affidavit of W'm H. Moore. Filed in my office this 1st day of October, 1869. W'm Breeden clerk.

375 And afterwards, to wit, on the 2nd day of October, 1869, the following affidavit of Joab Houghton was filed, which said affidavit is in the words and figures following, to wit:

GERTRUDE E. WEBB, ADM'X,
vs.
W'M H. MOORE & W'M C. MITCHELL. } In chancery.

This affiant, Joab Houg'ton, administrator pro tem., and custodian of the estate of N. Webb, deceased, late of the firm of N. Webb & Co., El Paso County, Texas, and of the firm of W. H. Moore & Co., and custodian of the property of the said firms in Fort Bliss and Franklin, Texas, by virtue of letters of administration pro tem., granted to this affiant on the nineteenth day of October, A. D. 1866, from the probate court of the county of El Paso, Texas, having been duly sworn according to law, upon his oath says, that so much of the affidavit of William H. Moore herein, which states that this affiant, as administrator aforesaid, took out of the money of said firm of N. Webb & Co.
376 $2,870, and converted the same to his own use is false, the fact being that affiant, as administrator aforesaid, drew the aforesaid amount of money and applied the same to the payment of debts and expenses of the said N. Webb & Co., requiring to be paid and expended at the time in consequence of the death of Nathan Webb, partner of the firm; that affiant took receipts for the amounts of receipts and expenditures as administrator, presented his account for settlement to the probate court of El Paso County, the account was duly approved by said court on the 4th day of December, 1867, and affiant's securities as administrator released; that said account shows the amount drawn to be $2,820.00, the amount paid on account of the estate, with allowance of the probate court upon settlement, $2,315.50, leaving due the estate $504.50. Affiant further says that the house and lot in Franklin, Texas, referred to by said W. H. Moore in his affidavit herein, as occu-
377 pied by this affiant, and as paid for by the said Nathan Webb in his life-time out of the funds of N. Webb & Co., was not paid for by N. Webb, and not a cent of the money of the said firm of N. Webb & Co. was ever used for the purchase of said house and lot, and that though the U. S. marshal's deed was given in the name of Nathan Webb, he purchased it for another party, and received the deed, but never paid a cent of the consideration. Under that party affiant holds the house properly and legally, as can be shown when necessary.

Affiant further says that no money drawn by him from the estate of N. Webb, deceased, or goods, were for the use or benefit of Gertrude E. Webb, personally or otherwise.

J. HOUGHTON.

Sworn to and subscribed before me this 2nd day of October, 1869.
W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

378 Gertrude E. Webb, adm'x, vs. W. H. Moore & W. C. Mitchell, Affidavit of J. Houghton. Filed in my office, this 2nd day of October, 1869. W'm Breeden, clerk.

And be it further remembered that, on the second day of October, A. D. 1869, at chambers in the city and county of Santa Fé, and Territory of New Mexico, and in the first judicial district of said Territory, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

This day came on to be heard the motion herein by the complainant, by her solicitor, for a rule on the said defendants to compel the payment by them to the said complainant of the sum of one thou-
379 sand dollars, to meet her present necessary expenses, which motion is based on bill and answer, and affidavits filed, and which motion being argued by counsel, and the court not being fully advised in the premises, takes said motion under advisement.

And be it further remembered that, on the same day, to wit, the second day of October, A. D. 1869, in chambers at the aforesaid city and county of Santa Fé, Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

This day came the said defendants, by their solicitor, and move the court to direct the clerk of this court to expunge from the bill and answer herein certain marginal notes and memoranda placed
380 thereon since the filing of the same, which said motion is in the words and figures following, to wit:

GERTRUDE E. WEBB, ADM'X,
vs.
WILLIAM H. MOORE & W'M C. MITCHELL. } Chancery.

And now comes the said def'ts, by John S. Watts, their att'y, and suggests to the court that some one, since the filing of the original bill herein, and the answer of said defendant, W'm H. Moore, has wrongfully defaced said bill and answer by making divers marginal notes and memoranda on the margin of said bill and answer, thus defacing

and altering the papers of record in this case. And thereupon the said def'ts move that the clerk of this court be directed to expunge and erase from said bill and answer all such marginal notes and memoranda placed on said papers since the filing of said papers in the office of said clerk.

JOHN S. WATTS,
Att'y for Def'ts.

381 On which said motion is the following endorsement, to wit:

Webb vs. Moore & Co. Chancery. Motion to erase certain notes and memoranda made on bill and answer since the filing of the same.

J. S. WATTS, *For Def'ts.*

Filed in my office this 1st day of October, 1869.

W'M BREEDEN, *Clerk.*

Which motion, being submitted without argument, is sustained by the court, and the clerk is directed to expunge the said marginal notes and memoranda.

And be it further remembered that, on the eleventh day of October, A. D. 1869, at chambers in the city and county of Santa Fé, in the first judicial district of the said Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX,
vs.
382 W'M H. MOORE & W'M C. MITCHELL. } Chancery.

The motion of the said complainant, by her solicitor, for an order on the said defendants, to compel the payment by them to the said complainant of the sum of one thousand dollars, having been argued and submitted on a former day, and the same having then been taken under advisement, and the court being sufficiently advised in the premises—

It is ordered by the court that the defendants, William H. Moore and William C. Mitchell, be required to pay to the complainant or to her order, or to her solicitor, Stephen B. Elkins, esquire, or to his order, the sum of one thousand dollars, on the presentation to the said defendants, or either of them, of a certified copy of this order, said sum of one thousand dollars to be credited to the said defendants on the final accounting in this cause.

383 And be it further remembered that, on the eleventh day of October, A. D. 1869, in the clerk's office of the 1st judicial district court of the Territory of New Mexico, the following opinion was filed, which said opinion is in the words and figures following, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX, OF THE estate of Nathan Webb, deceased,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL. } In equity.

Application of the complainant for an order requiring the defendants to pay her one thousand dollars in this suit.

Stephen B. Elkins, esq'r, for the motion.
Hon. John S. Watts, opposed.

Opinion of the court.

The relief sought by this motion involves two questions:

1st. Has a court of equity jurisdiction right *or* to grant the relief?

2nd. Has the complainant, as administratrix of her deceased husband, an estate or interest to the amount of one thousand dollars in the
384 assets of the late firms of W. H. Moore & Co. and N. Webb & Co.?

If the second question is determined in the affirmative, there can be little doubt of the power and duty of the court to grant the relief.

Equity requires the defendants to pay over to the complainant the balance, if any, due to her as administratrix of her deceased husband's estate. This suit was instituted for the purpose of enforcing such payment.

It is difficult, from the pleadings and other papers before the court on this motion, to arrive at the true state of the accounts between the parties. The court has devoted much time and labor to the investigation, without reaching a conclusion entirely free from doubt and difficulty.

It is therefore proper to enquire whether there are any facts and circumstances in the case that should controle the opinion and decision of the court in this state of doubt and uncertainty as to the true state of the accounts between the parties.

385 Webb died October 15th, 1866. The bill of complaint in this cause was filed January 22nd, 1869. More than three years intervened from the death of Webb to the commencement of this suit, a period that would appear ample for the final adjustment and settlement of the accounts between the parties.

The defendant Moore admits that the complainant applied to him prior to July 1st, 1867, for a settlement of the accounts. The affidavit of Mr. Shoemaker proves that, as early as October, 1866, the defendant Moore promised to make settlement with the complainant in July, 1867. In August, 1867, when the complainant was about to bring suit, the defendant Moore promised her that if she would forbear suit he would have the accounts of both the firms posted, and the assets of all the business stated.

Again, on the 27th of June, 1868, complainant wrote Moore, pressing for a settlement, and requesting him to give her a definite answer
386 as to a settlement, which letter elicited no response from Moore; the supplemental bill discloses another and fruitless effort in August, 1868, on the part of the complainant, to effect a settlement.

These facts are conclusive that the complainant is in no wise responsible for the delay that has occurred in the adjustment and settlement of the accounts. While she has earnestly and diligently sought such settlement, the defendant Moore, representing the defendants, has delayed the same, far beyond the time he deemed reasonable for that purpose in the first instance.

Equity requires that if either party must suffer, on account of this delay it should be the party who is responsible for it, and who alone could have prevented it. This delay, on the part of the defendants, is entitled to consideration in the determination of the question involved by this application.

Moore states in his answer (page 22) that "he has always and
387 on all occasions, supplied the complainant with sufficient funds for her personal use and benefit, whenever called upon for that purpose by the complainant." Moore also agreed with Mr. Shoemaker, on behalf of the complainant, that she should at all times, until settle-

ment with her, draw in cash or merchandise whatever she wanted for he' use or current expenses. Moore has also made voluntary advances or payments to the complainant since the commencement of this suit. This action, on the part of Moore, would appear to warrant the conclusion that up to a recent period he considered it the duty of the defendants to supply the complainant with funds for her current expenses, and may properly be taken as an admission on his part that the defendants had funds in their hands belonging to the estate of Nathan Webb, deceased.

The court directs the clerk to enter an order in this cause requiring the defendants William H. Moore and William C. Mitchell to
388 pay to the complainant, or to her order, or to her solicitor, Stephen B. Elkins, esquire, or to his order, the sum of one thousand dollars, on the presentation to said defendants, or either of them, of a certified copy of this order; said sum of one thousand dollars to be credited to the said defendants on the final accounting in this cause.

Santa Fé, New Mexico, October 11th, 1869.

J. G. PALEN, *C. J., &c.*

On which said opinion is the following endorsement, to wit:

Gertrude E. Webb, administratrix, vs. W'm H. Moore & W'm C. Mitchell. Opinion & order filed in my office this 11th day of October, 1869. W'm Breeden, clerk.

On the hearing of the foregoing motion for the payment of one thousand dollars, the bill of complaint and exhibits filed therewith, together with the affidavits filed with said motion, were read in
389 support thereof; and in opposition thereto, the answers with their exhibits, and the affidavits filed in opposition to the motion were read.

And be it remembered that afterwards, to wit, on the 16th day of October, A. D. 1869, at chambers, in the city and county of Santa Fé aforesaid, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

This day came on to be heard the motion of the said defendants to set aside and vacate the order entered herein on the 11th instant, directing the payment by defendants to complainant of the sum of one thousand dollars, which said motion is in the words and figures following, to wit:

GERTRUDE E. WEBB, ADM'X,
vs.
W'M H. MOORE & W'M C. MITCHELL. } Motion.

390 The said defendants move to set aside and vacate the order made by Judge J. G. Palen in this case as follows, to wit:

"The court directs the clerk to enter an order in this case requiring the defendants William H. Moore and William C. Mitchell to pay to the complainant, or to her order, or to her solicitor, Stephen B. Elkins, esquire, or to his order, the sum of one thousand dollars, on the presentation to the said defendants, or either of them, of a certified copy of

this order; said sum of one thousand dollars to be credited to the said defendants on the final accounting in this cause.

"Santa Fé, New Mexico, October 11th, 1869.

(Signed) "J. G. PALEN, *C. J., &c.*"

For the following reasons:

First. The order is void, because there is no power vested in the United States district court for the first judicial district by the Constitution of the United States, the laws of Congress, or the organic act constituting said court, or in the laws of New Mexico defining
381 its powers and jurisdiction, authorizing said court, in vacation, anterior to a final hearing of the case on its merits, and over the sworn answers of the defendants that they are not indebted to the complainant in a single dollar, supported by exhibits showing that complainant has already been largely overpaid what she is legally entitled to receive, to make such order. It is a judgment of the merits of the case prior to a hearing of the evidence, and if the right to take, prior to the hearing, one thousand dollars of the defendants' money and give it to the complainant exists, there is nothing to prevent the court taking $100,000 of the defendants' money and giving it to the complainant; thus placing the entire property of the defendants at the disposal of the court for the benefit of the complainant, in advance of affording the defendants an opportunity on a final hearing to establish the fact sworn to by them, that they owed the complainant nothing.

382 Second. Said order is void, and ought to be set aside, because the said complainant and the said S. B. Elkins, her solicitor, knew at the time of the argument and submission of said motion, that the said complainant had lost the right to conduct said motion in the name of Gertrude E. Webb, administratrix, for the reason that prior to that time she had intermarried with and was the wife of one David L. Huntington, and the said complainant and her said solicitor, instead of stating that fact to the court and asking that said Huntington be made a party to said cause, concealed said fact.

All of which is respectfully submitted.

JOHN S. WATTS,
For Defendants.

On which said motion is the following endorsement, to wit:

Gertrude E. Webb, ad'x, vs. Moore & Mitchell. Chancery. Motion to set aside order. Filed in my office this 12th day of October, 1869.
383 W'm Breeden, clerk. J. S. Watts, for def'ts. Motion overruled with costs, Oct. 16, 1869. J. G. Palen, C. J., &c.

Which motion being argued by counsel, and the court, being fully advised in the premises, overrules said motion, and it is ordered by the court that the said defendants pay the cost of this motion and the proceedings thereon.

And afterwards, to wit, on the 16th day of October, A. D. 1869, the following affidavit was filed, which said affidavit is in the words and figures following, to wit:

G. E. WEBB
vs.
W. H. MOORE ET AL. } In chancery.

S. B. Elkins, one of the solicitors in the above cause for complainant,

being duly sworn, upon his oath states, that on Wednesday last, as he now remembers, being the 13th day of October, A. D. 1869, he endorsed the order for the payment of one thousand dollars, made by the
394 court on motion of complainant on the 11th day of October, A. D. 1869, at chambers, to one John C. Dent, esq., at Fort Union, New Mexico, and forwarded said order to him, the said John C. Dent, by mail.

S. B. ELKINS.

Sworn to and subscribed before me this the 16th day of October, A. D. 1869.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:
Gertrude E. Webb vs. W'm H. Moore & W'm C. Mitchell. Affidavit of S. B. Elkins. Filed in my office this 16th day of October, 1869. W'm Breeden, clerk.

And be it further remembered that, on the 18th day of October, A. D. 1869, at chambers, in the aforesaid city and county of Santa Fé, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

395 GERTRUDE E. WEBB
vs.
WM' H. MOORE & W'M C. MITCHELL. } Chancery.

This day came the said defendants, by Messrs. Tompkins and John Watts, and ask that an appeal be granted them from the judgment of the court, denying and overruling the motion herein to vacate and make null the order entered herein on the 11th inst., directing the payment to complainant, by the defendants, of the sum of one thousand dollars, whereupon it is ordered by the court that a rule issue to the solicitors to show cause, if any they have, on Thursday, the 21st inst., at 3 o'clock, p. m. of said day, why said appeal should not be allowed.

And be it further remembered that, on the 21st day of October, A. D. 1869, at chambers, in the city and county of Santa Fé, in the first judicial district court of the Territory of Mew Mexico, the following
396 proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

This day came on to be heard, the motion of the said defendants for an appeal to the supreme court of New Mexico, from the judgment of the court denying and overruling the motion herein, to vacate and make null the order entered herein on the 11th instant, directing the payment to complainant by defendants, of the sum of one thousand dollars, which said motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA:
Territory of New Mexico, County of Santa Fé.

GERTRUDE E. WEBB, ADM'X, &C.
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

The defendants, John S. Watts & Son, their attorneys, now
397 move the court for an appeal to the supreme court in the above case, from the decision ordering the defendants to pay to the complainant one thousand dollars, made on the 11th day of October, A. D. 1869.

JOHN S. WATTS & SON,
Att'ys for Def'ts.

On which said motion is the following endorsement, to wit:

Gertrude E. Webb vs. W'm H. Moore & W'm C. Mitchell. Motion for appeal. Filed in my office this 21st day of October, 1869. W'm Breeden, clerk.

Which being argued by counsel, and the court not being fully advised in the premises, takes said motion under advisement.

And on the same day, to wit, on the 21st day of October, A. D. 1869, the following appeal bond and affidavit were filed, which said bond and affidavit are in the words and figures following, to wit:

398 UNITED STATES OF AMERICA:
Territory of New Mexico, County of Santa Fé.

Know all men by these presents, that we, John Watts, as principal, and Valentine S. Shelby, and J. A. La Rue, as securities, are held, and firmly bound unto Gertrude E. Webb, administratrix, &c. in the sum of two thousand dollars, for the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, firmly by these presents, signed and sealed, this 18th day of October, A. D. 1869.

The condition of the above obligation is such, that whereas the judge in vacation in the case of Gertrude E. Webb, administratrix of the estate of Nathan Webb, deceased, against William H. Moore and William C. Mitchell, defendants in chancery, made on the 11th day of October, A. D. 1869, an order, judgment, and decision in these words:

"The court directs the clerk to enter an order in this cause re-
389 quiring the defendants William H. Moore and William C. Mitchell, to pay to the complainant, or to her order, or to her solicitor, Stephen B. Elkins, esquire, or to his order, the sum of one thousand dollars, on the presentation to said defendants, or either of them, of a certified copy of this order, to be credited to the said defendants on the final accounting in the case." From which said defendants ask an appeal to the supreme court, which is granted.

Now, if the said William H. Moore and William C. Mitchell shall prosecute said appeal with due diligence to a decision in the supreme court, and if the decision appealed from be affirmed, or the appeal dismissed by the said defendants, shall perform the decision of the district court, and shall pay all costs and damages that may be adjudged against

them on said appeal, then said obligation is null and void; otherwise in full force and virtue in law.

JOHN WATTS. [SEAL.]
400 VALENTINE S. SHELBY. [SEAL.]
J. A. LA RUE. [SEAL.]

The penalty and sureties of the above bond approved by me this 18th day of October, 1869.

W'M BREEDEN, *Clerk.*

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Santa Fé:

John Watts, one of the attorneys of William H. Moore and William C. Mitchell, defendants, in the case of Gertrude E. Webb, adm'x, against them; upon his oath, states that he does not ask for nor take an appeal in said cause on the part of said defendants for the purpose of vexation or delay, but because said affiant believes that said defendants are aggrieved by the decision of the court, ordering them to pay to the said Gertrude E. Webb one thousand dollars.

JOHN WATTS,
Att'y for Moore & Mitchell.

Subscribed and sworn to before me this 18th day of October, A. D. 1869.
401 W'M BREEDEN, *Clerk.*

On which said paper, is the following endorsement, to wit:
Gertrude E. Webb vs. W'm H. Moore & W'm C. Mitchell. Affidavit and bond for appeal. Filed in my office this 21st day of October, 1869. W'm Breeden, clerk.

And be it further remembered that, on the 22nd day of October, 1869, at chambers, in Santa Fé, New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX, &C., *vs.* W'M H. MOORE & W'M C. MITCHELL. } Chancery.

The motion for an appeal to the supreme court of the Territory
402 from the order entered in this cause, on the 11th inst., having been argued and submitted on a former day, and the court having then taken said motion under advisement, and being now sufficiently advised in the premises overrules said motion, and it is ordered that the defendants pay the costs of said motion, with all the proceedings thereon. It is also ordered by the court that the opinion of the court on this motion be recorded, and that the defendants pay the costs of the same, the said opinion being in the words and figures following, to wit:

In chancery. First judicial district.

GERTRUDE E. WEBB, ADMINISTRATRIX, &C., OF Nathan Webb, deceased. *vs.* WILLIAM H. MOORE AND WILLIAM C. MITCHELL.

Motion for allowance of an appeal to the supreme court from an interlocutory order made in this cause October 11th, 1869.

Tompkins & Watts for motion.
Elkins opposed.

403 *Opinion of the court.*

The order in question was made on motion heard at chambers, directing the payment of $1,000 by the defendants to the complainant.

As the merits of the case are involved by the order an appeal should be allowed from the same if authorized by the organic act, or the laws of the Territory.

The following is the only provision of the organic act authorizing appeals from the district courts to the supreme court: "Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions from said district courts to the supreme court under such regulations as may be prescribed by law." It is obvious that this language does not include or authorize appeals from interlocutory orders or decrees, consequently no authority for the allowance of an appeal from the order in question is vested in the district court by the organic act.

404 Appellate jurisdiction in the case of interlocutory decisions has not been conferred on any of the courts of the United States, such jurisdiction having been in all cases restricted to final decisions.

It remains to inquire whether the laws of the Territory authorize the appeal.

The following are the provisions of the territorial laws authorizing appeals from district courts to the supreme court:

Kearney code, chapter 16, entitled district courts, R. S., 106, sec. 1:

Every person aggrieved by any judgment or decision of any circuit court in any civil case may make his appeal to the supreme court.

"The superior court shall have appellate jurisdiction in all cases, both civil and criminal, which may be determined in the circuit court."

Act of July 12th, 1851, R. S., 200, sec. 46; Act of Jan'y 30, 1862, R. S., 110, sec. 14:

Motions for new trials and in arrest of judgment shall be entertained. Appeals shall also be allowed in a manner to be provided by law.

All suits brought in district courts in this Territory, which suits shall have been determined in said courts, if either of the parties desire to take an appeal from the judgment of said court, on complying with the provisions of the law regulating appeals, said appeal may be granted.

405 It will be seen that the Kearney code confers appellate jurisdiction on the superior court only in cases which may be determined in the circuit court. The subsequent sections of the article regulating the practice on appeals, show conclusively that appeals from final decisions alone are contemplated by the law.

The act of January 30th, 1862, the most recent law on the subject, confers appellate jurisdiction on the supreme court only in suits which shall have been determined in the district courts.

As the order in question is not final, and can in no sense be said to determine the suit, the territorial laws confer no authority on the district court to allow an appeal therefrom, and vest no jurisdiction in the supreme court to hear and determine the same.

The motion is, therefore, denied, with costs.

October 22nd, 1869.

J. G. PALEN, *C. J.*, &c.

On which said opinion is the following endorsement, to wit:

406 In chancery. First judicial district. Gertrude E. Webb, administratrix, &c., vs. William H. Moore and William C. Mitchell. Opinion. Filed in my office this 23d day of October, 1869. W'm Breeden, clerk.

And afterwards, to wit, on the 23d day of October, A. D. 1869, the following bill of exceptions was filed, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Santa Fé:

Chancery. First judicial district.

GERTRUDE E. WEBB, ADM'X OF NATHAN WEBB, deceased,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL.

Be it remembered that heretofore, to wit, on the 27th day of September, 1869, the said complainant filed herein her affidavit in the words and figures following:

407 (See page 310.)

And the affidavit of William R. Shoemaker, in the words and figures following:

(See page 314.)

And also the affidavit of Joab Houghton, in the words and figures following:

(See page 316.)

And thereupon the complainant, by her solicitor, Stephen B. Evans, moved the court upon said affidavits to order the defendants to pay over to the complainant the sum of one thousand dollars, for the temporary support and maintenance.

And afterwards, to wit, on the 1st day of October, 1869, the said defendants filed herein the affidavit of William H. Moore, in the words and figures following:

(See page 323.)

And also the affidavit of Henry V. Harris, in the words and figures following:

(See page 320.)

And thereupon the said complainant filed the further affidavit of Joab Houghton, herein, in the words and figures following:

(See page 332.)

408 And thereupon, by agreement of parties, said motion is now set down for hearing, and the bill is now read to the court, with its exhibits, in the words and figures following:

(See page .)

And the answer of said defendants, with the exhibits:

(See pages . And also the affidavits above mentioned.)

And thereupon said motion was fully argued by Stephen B. Elkins for the complainant, and John S. Watts for the defendants, and submitted to the court for decision; and the court, not being sufficiently advised in the premises, takes said motion under advisement.

And afterwards, to wit, on the 11th day of October, 1869, the judge of the United States district court for the first judicial district in and for the Territory of New Mexico, delivered his opinion and made his order upon said motion, in the words and figures following:

(See pages 338 & 339.)

409 And on the 12th day of October, 1869, on motion of said order, the said defendants, by John S. Watts, their solicitor, filed in this case a motion to annul and set aside said order; which motion is in the words and figures following:

(See page .)

Which said motion was, by agreement of the parties, by their attorneys, submitted to the court for hearing; and said motion, after argument by S. B. Elkins for the complainant, and John S. Watts for defendants, was submitted to the court for decision, and the court not being sufficiently advised in the premises, takes said motion under advisement.

And afterwards, to wit, on the 16th day of October, 1869, the court being sufficiently advised in the premises, overruled said motion to annul and set aside said order requiring said defendants to pay one thousand dollars to complainant; to which opinion of the court the defendants except, and ask that this, their bill of exceptions, may
410 be signed and sealed by the court and made a part of the record herein, which is done accordingly this 23d day of October, A. D. 1869.

J. G. PALEN, *C. J., &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit: Gertrude E. Webb vs. W'm H. Moore & W'm C. Mitchell. Bill of exceptions. Filed in my office this 23d day of October, 1869. W'm Breeden, clerk.

And be it remembered that afterwards, to wit, on the 11th day of December, A. D. 1869, the following petition for mandamus was filed in the clerk's office of the United States district court for the first judicial district of the Territory of New Mexico, which said petition is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
411 *Territory of New Mexico, County of Santa Fé:*

To the Hon. Hezekiah S. Johnson and Abram Bergen, associate justices of the supreme court of the Territory of New Mexico:

Your petitioners, William H. Moore, a resident of Fort Union, Mora County, New Mexico, and William C. Mitchell, a resident of St. Louis, Missouri, would respectfully state to you that a suit in chancery is pending against them in the United States district court for the 1st judicial district of Mora County, New Mexico, in which one Gertrude E. Webb is complainant, as administratrix of the estate of Nathan Webb, deceased, and claiming to be his sole heir, against the said William H.

Moore & William C. Mitchell, as surviving partners of the firm of W. H. Moore & Co. and N. Webb & Co., in which said complainant claims a settlement of the partnership accounts of said firms, and alleges that there is due her about one hundred thousand dollars, on a settlement of said business of said firms.

412 Your petitioners would further state that it appears by said bill that Nathan Webb, the husband of said complainant, died in El Paso, Texas, where the business of the firm of N. Webb & Co. was conducted, and that letters of administration were taken out on his estate in El Paso County, Texas, by said complainant, and that the business of W'm H. Moore & Co. was conducted at Fort Union, Mora County, Territory of New Mexico, and that the said complainant had taken out letters of administration in said county of Mora, on said estate of her said husband, Nathan Webb, deceased. All of which facts will more fully appear by reference to a copy of said bill hereby made a part of this petition, marked as Exhibit A herein.

Your petitioner' would further state that, in the court at Mora, at last term, the said William H. Moore and William C. Mitchell filed their answer under oath, to said bill, in which they set forth the

413 condition of the partnership business, as taken from the books of said firm, showing that the said Nathan Webb, in his lifetime, and the said complainant, since his death, has drawn out of said business, for their own private use and benefit, over $40,000, when the interest of said Nathan Webb in said business did not exceed $25,000, and also knowing that Sarah Webb, mother of said Nathan Webb, deceased, was alive and residing in Burlington, Iowa, and by the laws of New Mexico entitled to one-half the estate of her deceased son, situate in New Mexico, and distributed under the laws of said Territory, and asking that she be made a party. All of which will more fully appear by reference to the separate answers of the said Moore & Mitchell filed in said cause, a copy of which answers is hereby made a part of this petition, marked as Exhibits B & C herein.

Your petitioners would further state that, since the adjournment of the court at Mora, before the Hon. Joseph G. Palen, chief jus-

414 tice of the supreme court of the Territory of New Mexico, and judge presiding in the first judicial district court of said Territory, was applied to, at Santa Fé, in vacation, by motion of the complainant in said cause, to order said petitioners to pay over to the said Gertrude E. Webb the sum of $1.000 to supply her present wants and necessities, and filed certain affidavits of herself, father, and brother-in-law, and attorney in support of said motion, and the said petitioners filed the affidavits of W'm H. Moore & Henry V. Harris in opposition to said motion, and, on a hearing of said motion, the said judge ordered that said W'm H. Moore & William C. Mitchell pay over to said complainant, her order, or to her attorney, S. B. Elkins, or his order, the said sum of $1,000.

Your petitioner' would further state that, upon notice of the making of said order, they filed a motion to set aside said order, for causes of illegality, set forth in said motion, and thereupon

415 said judge refused to set aside said order. All of which will more fully appear by a certified copy of said procedings in vacation, hereby made a part of this petition, marked as Exhibit C herein.

Your petitioners would further state that upon the refusal of said judge to set aside said order taking away from your petitioner' $1,000, and giving it to the complainant absolutely, anterior to a hearing of said cause on its merits, the said petitioners a'ked an appeal to the su-

preme court of the Territory of New Mexico, and filed the affidavit of their attorney, and tendered a good and sufficient appeal bond, with two solvent and responsible securities, but the said judge, Joseph G. Palen, wrongfully, illegally, unjustly, and to the sub'ersion of justice, and contrary to law, refused and denied your petitioners an appeal from the said decision awarding to said complainant $1,000 of the money
416 justly and rightfully belonging to your petitioners, which said facts will more fully appear by reference to said affidavit, motion for appeal, & appeal bond, copies of which are hereby made a part of this petition, marked as Exhibit' D, E, & F herein.

Your petitioner' would further state that the refusal to permit an appeal from such decision is a denial of the legal rights of your petitioners, and an assertion upon the part of said judge that he has the right and power to take the money of said petitioners at his will, anterior to a final hearing of the case, and give it to the complainant, and then deny the possibility of a review of the legality of such decision, by refusing the injured party the right of appeal as the only course open for relief against what your petitioners believe to be a decision contrary to law and subversive of equity and justice.

In consideration of the premises, the said petitioners ask that
417 a writ of mandamus issue from the supreme court of the Territory of New Mexico, directed to the said Joseph G. Palen, judge presiding in the first judicial district court for the Territory of New Mexico, commanding him forthwith to grant said appeal, and send up to the supreme court a complete record of said cause, and the judgment, decision, and proceedings in said cause at least ten days prior to the first Monday of January, 1870, and to grant your petitioners such other and general relief in the premises as may be consistent with equity and justice in the premises.

All of which is respectfully submitted.

WILLIAM H. MOORE &
WILLIAM C. MITCHELL,
By JOHN S. WATTS, *Solicitor.*

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Bernalillo:

John S. Watts, solicitor of the petitioners in the above-entitled
418 cause, upon his oath states that the matters and things set forth and contained in said petition are mostly matters of record in the said cause, and are true in substance and in fact, so far as stated from his own knowledge, and, so far as stated from the information of others, he believes them to be true.

JOHN S. WATTS,
Solicitor of Moore & Mitchell.

Subscribed and sworn to before me this fifteenth day of November, A. D. eighteen hundred and sixty-nine.

HEZEK. S. JOHNSON,
Associate Justice, &c.

The clerk of the supreme court will issue the writ of mandamus prayed for in the foregoing petition.

Given under my hand at Albuquerque, New Mexico, this 15th day of November, A. D. 1869.

HEZEK. S. JOHNSON,
Associate Justice, &c.

419 On which said petition is the following endorsement, to wit:

W'm H. Moore & W'm C. Mitchell vs. Joseph G. Palen, judge. Petition for mandamus. 1st judicial district court N. M. Filed in my office this 11th day of December, 1869. W'm Breeden, clerk. J. S. Watts for petitioners.

And be it further remembered that afterwards, to wit, on the 14th day of December, A. D. 1869, the following writ of mandamus was issued, which said writ of mandamus is in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO:

To the Hon. Joseph G. Palen, judge of the first judicial district court of said Territory, greeting:

Whereas it has been represented before the Hon. Hezek. S. Johnson, associate justice of the supreme court of the Territory of New
420 Mexico, that, in a certain proceeding, in a certain cause before you, at chambers, wherein Gertrude E. Webb is complainant, and William H. Moore and William C. Mitchell are defendants, and in which proceeding judgment was rendered against the defendants, and an order entered requiring them to pay to the complainant the sum of one thousand dollars, which judgment and order were entered on the 11th day of October, 1869; and that application being made by the said defendants for an appeal to the supreme court of said Territory, said defendants presenting the affidavit required by law in support of applications for appeal, and also a proper and sufficient appeal bond, you refused to allow such appeal: Now, therefore, you are commanded that upon the compliance of the defendants with the conditions prescribed by law, you do grant an appeal to the supreme court of said Territory from said judgment and order; and that you do cause to be filed
421 with the clerk of said supreme court a true and perfect transcript of all your proceedings in said matter, and of all the original papers before you at said hearings, on the first day of the next term of said court, and hereof fail not under penalty of the law.

Witness the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory and the seal of said court this 14th day of December, A. D. 1869.

[SEAL.] W'M BREEDEN, *Clerk.*

On which said writ of mandamus are the following endorsements, to wit:

I certify that I have served the within mandamus upon the Hon. Judge Palen, at his usual place of abode, by delivering a true copy thereof this 14th day of December, A. D. 1869.

JOSÉ D. SENA,
Sheriff S'ta Fé.

Gertrude E. Webb vs. W'm H. Moore & W'm C. Mitchell.
422 Mandamus to Judge Palen. (Duplicate.)

I have allowed and appeal in obedience to the within writ, Dec'r 14, 1869.

J. G. PALEN, *C. J., &c.*

And afterwards, to wit, on the 15th day of December, 1869, the follow-

ing paper granting an appeal was filed, which said paper is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO,
First Judicial District:

GERTRUDE E. WEBB, ADMINISTRATRIX OF, &C., *of* Nathan Webb, deceased,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL

In obedience to a writ of peremptory mandamus issued out of the supreme court, commanding me to allow an appeal to the supreme court from a certain order made in this cause on the eleventh day of October, A. D. 1869, requiring the defendants to pay to the com-
423 plainant the sum of one thousand dollars:

I do hereby allow the said appeal upon the defendants filing the affidavit and security required by law.

This appeal is allowed out of respect for the order of my brother Johnson and the process of the supreme court, and such allowance is not to be deemed or taken as an admission of the propriety of such process in this case.

Santa Fé, New Mexico, December 14, 1869.

J. G. PALEN, *C. J., &c.*

To W'M BREEDEN, Esq.,
Clerk of the Supreme Court.

Which said paper is duly entered of record, and upon which is the following endorsement, to wit:

Gertrude E. Webb vs. W'm H. Moore & W'm C. Mitchell. Chancery. Allowance of appeal from order directing payment of $1,000. Filed in my office this 15th day of December, 1869. W'm Breeden, clerk.

424 And afterwards, to wit, on the 15th day of December, A. D. 1869, the following order was filed and entered of record. Which said order is in the words and figures following, to wit:

GERTRUDE E. WEBB
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

When the appeal this day allowed in this cause shall be perfected by the filing of the affidavit and security required by law, you will notify the complainant or her solicitor of such appeal, and make return of the said appeal as required by law.

J. G. PALEN, *C. J., &c.*

Dec. 14, 1869.
To W'M BREEDEN, esq.,
Clerk of the Supreme Court.

And afterwards, to wit, on the 20th day of December, A. D. 1869, the following appeal bond was filed, which said appeal bond is in the words and figures following, to wit:

425 Know all men by these presents that we, William H. Moore, of Fort Union, New Mexico, and William C. Mitchell, of St. Louis, Missouri, as principals, and S. Seligman and T. McDonald, both

of the city and county of Santa Fé, and Territory of New Mexico, are held and firmly bound unto Gertrude E. Webb, administratrix of Nathan Webb, deceased, in the sum of one thousand dollars, good and lawful money of the United States, to be paid to the said Gertrude E. Webb, her heirs, executors, administrators, and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents, sealed with our seals this 20th day of December, A. D. 1869.

The condition of the above obligation is such that whereas an order was issued by Hon. Joseph G. Palen, chief justice of the Territory of New Mexico, in chambers, on the 11th day of October, directing the
426 said William H. Moore and William C. Mitchell to pay to Gertrude E. Webb, or order, the sum of one thousand dollars, to be accounted for at the final hearing of the suit of Gertrude E. Webb vs. William H. Moore and William C. Mitchell, to which an appeal was taken to the supreme court of the Territory of New Mexico, to be begun and held on the 3rd day of January, A. D. 1870:

Now, therefore, if the said William H. Moore and William C. Mitchell shall be and appear at the term of the court aforesaid, and faithfully prosecute said appeal, and *to* abide any and all judgments, decisions, orders, and costs which may be ordered, adjudged, and decreed against them, then the above obligation to be null and void; otherwise to remain in full force and virtue.

W'M H. MOORE &
W'M C. MITCHELL.
By JOHN WATTS & SON, *Att'ys.* [SEAL.]
S. SELIGMAN. [SEAL.]
T. McDONALD. [SEAL.]

427 On which said bond is the following endorsement, to wit:

Gertrude E. Webb vs. W'm H. Moore & W'm C. Mitchell. Appeal bond. Filed in my office this 20th day of December, 1869. W'm Breeden, clerk.

And be it further remembered that on the 28th day of March, A. D. 1870, being the 7th day of the March, A. D. 1870, term of the said United States district court for the first judicial district of the Territory of New Mexico, in and for the county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX, &C.,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

428 And now comes the complainant, by her solicitors, Messrs. Elkins and Wheaton, and suggests to the court that since the last term of this court the said complainant has intermarried with one David L. Huntington, and moves the court for leave to amend her bill herein by making the said David L. Huntington a party complainant to the bill and proceedings herein; and that this cause proceed and be carried on against said defendants in the name of Gertrude E. Huntington and David L. Huntington, her husband, complainants. Which said motion is in the words and figures following, to wit:

G. E. WEBB, ADM'X, &C.,
vs.
W. H. MOORE & CO.

The complainant in the above-entitled cause, since the last term of the court, having lawfully intermarried with David L. Huntington, by her counsel moves the court that said David L. Huntington be
429 made a party complainant to the bill and proceedings herein, and that said cause proceed and be carried on against said defendants in the name of Gertrude E. Huntington and David L. Huntington, her husband, complainants.

T. D. WHEATON &
S. B. ELKINS,
For Motion.

On which said motion is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W. H. Moore & Co. Motion. Filed in open court this 28th day of March, 1870. W'm Breeden, clerk.

Which motions are sustained by the court, and said persons made complainants in this cause.

And afterwards, to wit, on the 28th day of March, A. D. 1870, being the seventh day of the March, A. D. 1870, term of the said dis-
430 trict court for the said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. Huntington
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHell.
} Chancery.

And now come the complainants, by Messrs. Elkins and Wheaton, their solicitors, and now file their replications to the answers of William H. Moore and William C. Mitchell, which said replications are in the words and figures following, to wit:

G. E. HUNTINGTON & D. L. HUNTINGTON, her husband,
vs.
W. H. MOORE & W. C. MITCHELL.
} In chancery.

The replication of complainants to the answer of defendant.

WILLIAM H. MOORE, defendant:

These repliants saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to
431 the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto, saith that the' will maintain and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the

answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain and prove, as the honorable court shall direct, and humbly prays as in the said bill they have already prayed.

T. D. WHEATON &
S. B. ELKINS,
For Complainants.

On which replication is the following endorsement, to wit:

432 G. E. Huntington & D. L. Huntington, her husband, vs. W H. Moore & W. C. Mitchell. Filed in open court this 28th day of March, 1870. W'm Breeden, clerk.

G. E. HUNTINGTON & D. L. HUNTINGTON, HER husband,
vs.
W. H. MOORE ET ALS.

The replication of complainants to the answer of defendant.

WILLIAM C. MITCHELL, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, saith that they will aver, maintain, and prove *his* said bill to be true, certain, and sufficient in the
433 law to be answered unto by the said defendants, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this repliant without that, that any other matter or thing in the said answer certain, material, or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things the repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by their said bill they have already prayed.

S. B. ELKINS &
T. D. WHEATON,
For Complainants.

On which said replication is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington, her husband, vs. W. H. Moore et al. Replication to answer of W. C. Mitchell. Filed in open
434 court this 28th day of March, 1870. W'm Breeden, clerk.

And afterwards, to wit, on Monday, the 28th day of March, A. D. 1870, being the 7th day of the March, A. D. 1870, term of said district court for said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now come the complainants, by their solicitors, and move the court to strike from the files the answer of Sarah Webb, filed herein, for reasons stated in said motion; which said motion is in the words and figures following, to wit:

G. E. HUNTINGTON & D. L. HUNTINGTON, HER husband,
vs.
W. H. MOORE ET ALS. } In chancery.

435 Complainants, by their solicitors, move the court to strike from the files of the court the answer of Sarah Webb, as she is in no manner or way made a party defendant to the bill of complaint herein.

T. D. WHEATON &
S. B. ELKINS,
For Motion.

On which said motion is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Motion to strike from the files answer of Sarah Webb. Filed in open court this 28th day of March, 1870. W'm Breeden, clerk.

And it appearing to the satisfaction of the court that the said answer was only filed for the purpose of being read, on a certain motion heretofore made in this cause, therefore the clerk of this court is or-
436 dered to make such answer to show such fact.

And afterwards, to wit, on Tuesday, the 29th day of March, A. D. 1870, being the 8th day of the said district court for the said county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now come the said complainants, by their solicitors, Wheaton & Elkins, and file their motion to refer the bill, answers, and exhibits in this cause to a special master for purposes and reasons set forth in said motion; which said motion is in the words and figures following, to wit:

G. E. HUNTINGTON & D. L. HUNTINGTON, HER husband,
vs.
437 W. H. MOORE & W. C. MITCHELL. } Chancery.

The above-entitled cause being at issue, complainants by their solicitors move the court to refer the bill, answer, and exhibits filed in said cause to a special commissioner, with power to send for persons and pa-

pers, examine all witnesses that may be brought before him under oath, and, if necessary, the parties herein, in all matters and things pertaining to the partnership accounts and all business transactions referred to in said papers; also to examine the books, accounts, papers, invoices, or bills of said firm of W. H. Moore & Co., and, if necessary, to employ an accountant to assist said commissioner in said examination under such orders, rules, and restrictions as the court may impose, and make report at such time as the chancellor may direct.

WHEATON & ELKINS,
For Comp.

438 On which said motion is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington, her husband, vs. W. H. Moore et als. Motion. Filed in open court this 29th day of March, 1870. W'm Breeden, clerk.

And the court, after hearing the solicitors for both complainants and defendants, being fully advised in the premises, sustains said motion.

It is therefore ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth hereby order, adjudge, and decree that it be referred to William Breeden, master in chancery, to take and state the accounts mentioned in the pleadings in this cause, and especially to take and state the accounts of the late firms of William H. Moore & Company, Moore, Adams and Company, and N. Webb and Company, with the estate of Nathan Webb, deceased; and that the said master be, and he hereby is, authorized to employ
439 a competent accountant to assist him upon the said accounting, first giving to the solicitors of the respective parties ten days' notice of his intention to employ such accountant to afford them an opportunity to be heard before him in relation to the proper person to be selected; and that, for the purpose of taking and stating said accounts, the said master be authorized and required to summon the proper parties before him from time to time as may be necessary, and to examine any of the parties to this suit, on oath or otherwise, in relation to the matters in reference before him, and require any of the parties having possession of, or under their controle, any books of account, papers, or documents relating to the said accounts, to produce such books of account, papers, and documents before him, and leave the same with him for such time as said master may require; and further, that said master be, and
440 he hereby is, authorized to examine witnesses orally or otherwise upon such accounting in relation to the matters in reference before him under the provisions of this decree; and that the process of subpœna issue in this cause to enforce the attendance of witnesses before said master, upon application of the solicitors of the respective parties to the register of this court for such process of subpœna. It is further ordered, adjudged, and decreed that, during the pendency of the said reference, and until the further order of the court, the parties may proceed to take proofs-in-chief in this cause according to the cou'se and practice of this court, and that either parties may produce and read in evidence on such reference the proofs-in-chief in this cause and the pleadings in this cause.

It is further ordered that, during the pendency of the said reference, the said master, or any of the parties to this suit, be at liberty to
440 apply to this court upon the foot of this decree for further directions, and that the person selected as accountant to assist said master, shall, before he enters upon his duties as such accountant,

take and subscribe and file with the register of this court an oath faithfully and honestly to perform his duties as such accountant.

It is further ordered that the said master make report to this court upon the matters thus referred to him with all convenient speed, and annex to his report a schedule containing a copy of all the evidence produced before him on such reference; and it is further ordered that all other questions be reserved until the coming in of the master's report, and this cause continued until the next term of this court, when this cause shall again be brought on to a hearing, if in readiness, upon the master's report and the equities reserved.

And afterwards, to wit, on the 5th day of May, A. D. 1870, the
442 following master's summons, underwriting, and return was filed in the clerk's office by the master in chancery, in the words and figures following, to wit:

First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON & DAVID L. HUNTINGTON, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

The parties in this cause are hereby summoned to attend a hearing of the matters in reference before me in said cause, on the 16th day of May, 1870, at 10 o'clock a. m.

W'M BREEDEN,
Master in Chancery.

SANTA FÉ, N. M., *May* 4, 1870.

Underwriting.—To proceed to the appointment of an accountant to assist the master in accounting in said cause, in pursuance of the decree made in this cause on the 29th day of March, 1870.

443 W'M BREEDEN,
Master in Chancery.

On which said summons is the following endorsement, to wit:

I certify that I have this day served the within summons by leaving a true copy thereof at the office of S. B. Elkins, esq., complainant's solicitor, and by leaving a true copy thereof at the office of John S. Watts, esq., solicitor for the defendants.

M. A. BREEDEN.

Subscribed and sworn to before me this 4th May, 1870.

W'M BREEDEN, *Clerk.*

G. E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Master's summons. Filed in my office this 5th day of May, 1870. W'm Breeden, clerk.

444 And afterwards, to wit, on the 17th day of May, A. D. 1870, the following affidavit of accountant was filed, which said affidavit is in the words and figures following, to wit:

First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON & DAVID L. HUNTINGTON, her husband,
vs.
WILLIAM H. MOORE, & WILLIAM C. MITCHELL.

TERRITORY OF NEW MEXICO,
County of Santa Fé:

I, Eben Everett, having been appointed to assist the master in the accounting in the above-entitled cause, do solemnly swear that I will faithfully and honestly perform my duties as such accountant to the best of my knowledge, skill, and ability. So help me God.

EBEN EVERETT.

Subscribed and sworn to before me this 17th day of May, A. D. 1870.

445 W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Affidavit of accountant. Filed in my office this 17th day of May, 1870. W'm Breeden, clerk.

First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON & DAVID L. HUNTINGTON, her husband,
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

Deposition of Henry V. Harris, taken by and before W'm Breeden, master in chancery, to be used upon the reference of matters in
446 this cause pending before said master. Said deposition was taken by said master at his office in Santa Fe, New Mexico, commencing on the 11th day of July, A. D. 1870, and said master was attended upon such examination by counsel of the respective parties, Mr. Elkins for complainants, and Mr. Clever for defendants.

H. V. HARRIS, being first duly sworn, upon his oath, states:

Questions by the master.

Question 1. What is your name, age, occupation, and place of residence, and how long have you resided there?

Ans. My name is Henry V. Harris. I am 29 years of age, and bookkeeper and clerk for the firm of W. H. Moore & Co., at Fort Union, New Mexico, where I reside. I have been so employed for something more than seven years. I commenced in March, 1863.

Ques. 2. Please examine paper marked L and state what it is and under whose direction it was prepared, and whether it is in all
447 respects a full and true statement of the business of Rob't Campbell & Co. with W. H. Moore & Co. at the several dates mentioned in the account?

Ans. It is a statement of the account of Rob't Campbell & Co. with W. H. Moore, Adams & Co., prepared under my directions as required by the master in chancery, before whom the case is now in reference

and it is a true and correct statement of the account as taken from the books of W. H. Moore, Adams & Co.

Ques. 3. Please examine paper marked M, and state what it is; under whose direction it was prepared, and whether it is in every respect a full and true statement of the merchandize account of W. H. Moore, Adams & Co., for the time therein stated.

Ans. It is a true statement of the merchandize account of Moore, Adams & Co., taken from their books, prepared under my direction.

Qu's. 4. Please examine paper marked N, and state what it is,
448 and under whose direction it was prepared, and whether it contains a full and complete statement of the account of W. H. Moore & Co. with W. H. Moore, Adams & Co.

Ans. It is a true statement of the account of W. H. Moore & Co., with W. H. Moore, Adams & Co., and is true and correct as taken from the books of W. H. Moore, Adams & Co.

Q. 5. Please examine paper marked O, and state what it is, and under whose direction it was prepared, and whether it is a true statement of account of W. H. Moore, with W. H. Moore, Adams & Co.

Ans. It is a statement of the private account of W. H. Moore with W. H. Moore, Adams & Co., and is true and correct.

Q. 6. Please examine paper marked "P," and state what it is, and under whose direction it was prepared, and whether it is a correct statement of the account of W. C. Mitchell with W. H. Moore, Adams & Co.

Ans. It is a true and correct statement of the account of W. C.
449 Mitchell with W. H. Moore, Adams & Co., made under my direction, as were all the accounts above mentioned.

Q. 7. Does the private account of W. H. Moore, on the books of the firms of W. H. Moore & Co. and W. H. Moore, Adams & Co., show all the money, merchandize, and effects, drawn by Mr. Moore from those firms or not? Who kept the accounts, and in what manner were they kept? Did Mr. Moore take what he required from the establishment and report it to the book-keeper, or was the money drawn by him paid to him by the cashier or clerk; and was the account with Mr. Moore kept carefully and strictly, or otherwise?

Ans. The account, as kept on the books, shows all the amounts drawn by Mr. Moore from those firms. The accounts were kept by myself & Mr. Magruder, and they were kept in a correct and proper manner. The money he received was paid to him by the cashier or book-keeper, generally, and all that he ever drew out was charged to his account.

450 Q. 8. Do you know whether Mr. Moore had any means outside of his interest in the firm of W. H. Moore & Co., at the time Nathan Webb became a member of that firm?

Ans. Yes: he was doing quite a large business in Tecolate, under the firm of Moore & Mitchell, and they had been doing business there for over ten years, and continued doing business there for some time after Mr. Webb became a member of the firm of W. H. Moore & Co., at Fort Union. Webb was not interested in the business at Tecolate.

Q. 9. Are you acquainted with Mr. W. H. Moore's habits; and, if so, are they economical or otherwise?

A. I am pretty well acquainted with his habits. He is inclined to be liberal, but never goes beyond his means. I consider him an honest man.

Q. 10. Was any effort made prior to the commencement of this suit to settle the business of W. H. Moore & Co., and N. Webb & Co.,

451 and W. H. Moore, Adams & Co., and determine the interest of the estate of Nathan Webb, deceased, in said business; and, if so, what was the nature of the effort; who was it made by; to what extent was it prosecuted, and what result was reached?

Ans. There was an effort made to determine what the firms had made, up to Webb's death, by posting the books; making entries that had previously been omitted. I made the attempt at the request of W. H. Moore; and, as far as my knowledge and ability went, I think I made a pretty fair estimate of the condition of the business, and think I arrived at a fair estimate of what the firm of W. H. Moore & Co. had gained, and what they were worth at the time of N. Webb's death. All that was after this suit was commenced. Before the commencement of this suit I could, from my efforts, arrive at no definite conclusion as to the business of said firms. Both before and after the commencement of this suit I was repeatedly urged by Mr. Moore to fix up the books.

452 TUESDAY, *July* 12, 1870.

Q. 11. Under whose direction was the day-book of W. H. Moore & Co. written up on the 10th of August, 1868, pages 163 to 177, and were those entries made at that date or subsequently?

Ans. Those entries were all made by myself of my own accord. The most of them are entries that should have been made previous to that date, and made entries at different times subsequently, but did not change the date. The entries are all made correctly.

Q. 12. From whence was the date obtained on which those entries were made, and why were not those entries, which embrace transactions amounting to hundreds of thousands of dollars, made at the time such transactions took place?

Ans. The most of those entries should have been made long before they were; some of them more than a year before they were; a few of them, perhaps two or three years before they were. The entries were not made at the proper times from neglect on my part. The data
453 from which they were made was obtained from my knowledge of the books and the business, and reference to the different accounts standing open on the ledger.

Q. 13. Were all of such entries, or the greater part of them, made in the day-book referred to, and posted to the ledger, before the commencement of this suit, or otherwise?

Ans. A number of them were made after the commencement of the suit, but I cannot state what part *were* made before the commencement of the suit. The books of W. H. Moore, Adams & Co., will show the exact date of all the transactions in which they were concerned.

Q. 14. Before those entries were made in the books, was it possible to determine from the books the state of the accounts of the firm of W. H. Moore & Co.; the result of its business operations; its gains or profits, or the interest of the several members of the firm in the business and assets?

454 Ans. It was impossible to arrive at anything like an exact or definite estimate of the gains, the state of the accounts, or the interest of the partners.

Q. 15. Was there or not ample time, between the date of the death of Nathan Webb, and the 10th day of August, 1868, to have made all entries required to be made in those books, to have closed the accounts in the books, and to have reached as definite a determination of the

estate of the business and the interest of each partner as was possible from the character and condition of the business?

(Objected to by defendant, as the question before the commissioner is whether the entries referred to are right or wrong, and not as to the time they were made.)

Yes; the time was ample.

Q. 16. By whose direction, by whom, and at what date were the entries made in the day-book of N. Webb & Co., pages 636 to 644, inclusive, and with what amount are W. H. Moore & Co., credited in those entries?

455 Ans. When the books of N. Webb & Co. came up from Franklin, Texas, I drew off the account of W. H. Moore & Co., from those books; and, also, drew off the account of N. Webb & Co. on the books of W. H. Moore & Co., and after comparing the two statements, I found that those entries made in the day-book of N. Webb & Co., on pages 636 to 644, inclusive, had been omitted to be made by N. Webb & Co., and I made them. The amount so credited to W. H. Moore & Co. in those entries, is $295,663.90, and the amount debited to W. H. Moore & Co. is $49,554.04, all of which entries are correct. I think all these entries were made soon after the books of N. Webb & Co. came up to Fort Union, from Franklin, which was after the commencement of this suit.

Q. 17. From the date of Webb's death, were or were not the books of N. Webb & Co. within the reach of, and accessible to, W. H. Moore & Co.?

Ans. The books of N. Webb & Co. were, for a long time after the death of N. Webb, at Franklin, Texas, in charge of the agent of the surviving partners of the firm of W. H. Moore & Co.

456 Q. 18. Were all goods which were purchased east for N. Webb & Co., or marked to N. Webb & Co. shipped direct to Franklin, or were any of such goods at any time unloaded and examined at Fort Union; and, if so, were any portions of such goods retained at Fort Union?

(Objected to by defendants counsel, as it is shown that the firm of N. Webb & Co. was a branch house of W. H. Moore & Co.)

Ans. All goods purchased east for N. Webb & Co., were packed and marked to N. Webb & Co., and shipped direct to them. Some of the goods were unloaded at Fort Union and re-shipped; but no goods, to my knowledge, were ever retained at Fort Union.

Q. 19. In your former examination you testified with reference to a not' of $11,050, credited on the account of Capt. W. H. Bell, being for that amount of money loaned him; by whom was the amount loaned, and was it on account of W. H. Moore & Co., or on Mr. Moore's

457 private account; what, if any, security was taken for the payment of the note; and has the said note been paid, or has any demand been made for the payment, or any effort made to collect the amount?

Ans. The money was loaned to Capt. Bell, by and on account of the firm of W. H. Moore & Co. I know of no security having been given for the payment of the money; the note has never been paid; several demands have been made upon Capt. Bell for the money, by W. H. Moore & Co. He promises to pay it, but has, as yet, never done so.

Q. 20. In the accounts of Col. H. M. Enos, to balance his account the sum of $9,814.00 is charged to profit & loss; why was this charge made?

Ans. I transferred the amount of Col. Enos' account to the account

of profit & loss; as I considered the account doubtful and uncollectable.

Q. 21. In the books of W. H. Moore & Co., on the 15th day of
458 August, 1864, "real estate" is charged two thousand dollars; what real estate was this, on what account was it purchased, and what was done with it?

Ans. By reference to the day-book of W. H. Moore & Co. at that date, James M. Giddings has a credit by real estate of $2,000; and he is also charged with $1,342.25, amount due by him to Moore & Mitchell; this real estate was purchased of Giddings to secure the payment of this indebtedness. I cannot state what has become of it, but think it has been sold.

Q. 22. On the books of W. H. Moore & Co., May 1, 1867, N. Webb & Co. are charged $37,802.83, for sundry accounts in November and Deeember, 1867; what were those accounts?

Ans. The amounts so charged N. Webb & Co. on the books of W. H. Moore & Co. were for money paid by R. Campbell & Co. for goods purchased for N. Webb & Co. in the spring of 1866. The dates reported on the books are the dates when Campbell & Co. paid the amounts.

459 JULY 13TH, 1870.

Q. 23. What persons constituted the firm of Moore & Reese?

Ans. I always supposed it was W. H. Moore, W. C. Mitchell, and B. L. Reese, but I knew nothing positively. I know W. H. Moore, W. C. Mitchell, & B. L. Reese, were partners, but I do not know whether there were any more in that firm; I have understood from Messrs. Moore and Mitchell that Moore & Reese were partners before Mitchell was connected with them.

UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, master in chancery, before whom the above-entitled cause stands in reference, do hereby certify that the foregoing deposition was taken by me at my office in Santa Fé, in the county of Santa Fé and Territory of New Mexico; that said depositions were commenced on the 11th day of July, A. D. 1870, and closed on
460 the 13th day of July, A. D. 1870; that I was attended upon the examination by counsel of the respective parties, who were given an opportunity to examine and cross-examine the witness; and that the above-named Henry V. Harris, before testifying, was by me sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause; and that his foregoing deposition was reduced to writing by me.

Witness my hand and seal this 25th day of July, A. D. 1870.

[SEAL.] W'M BREEDEN,
Master in Chancery.

On which said paper is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Testimony of H. V. Harris. Filed in my office this 20th day of August, 1870. W'm Breeden, clerk.

461 First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHell.
} Chancery.

To the honorable Joseph G. Palen, chief justice of the supreme court of the Territory of New Mexico, and judge of the first judicial district court thereof, sitting in chancery within and for the county of Mora.

In pursuance and by virtue of a certain order and decree of this court made in this cause on the 29th day of March, A. D. 1870, whereby it was referred to the subscriber, a master in chancery of this court, to take and state the accounts mentioned in the pleadings in this cause; and especially to take and state the accounts of the late firm of William H. Moore & Co., William H. Moore, Adams & Co., and N. Webb
462 & Co., with the estate of Nathan Webb, deceased, with authority to the undersigned master to employ a competent accountant to assist him upon said accounting, to examine the proper and necessary parties in relation to the matters in reference, to examine witnesses orally or otherwise in relation to such matters, and to require to be produced before him any books of account, papers, or documents relating to said accounts, and leave to either party to produce and read in evidence on said reference the proofs in chief and the pleadings in this cause:

I respectfully certify and report that, pursuant to the authority conferred by said decree, I employed a skillful and experienced accountant, who has faithfully devoted himself to the duty assigned him; that I caused to be produced before me the books of account of the late firms of W. H. Moore & Co. and N. Webb & Co., and abstracts duly verified of the accounts from the books of William H. Moore, Adams &
463 Co., material to be considered on the reference before me; that under the authority of said decree I directly examined one witness only in relation to the matters in reference, to wit: Henry V. Harris, whose testimony is annexed to this report.

In considering the matters before me, by virtue of the provisions of said decree, I relied mainly upon the proofs in chief in this cause taken pending said reference, and up' the pleadings and exhibits in this cause.

I issued and caused to be properly served on the 5th day of May, A. D. 1870, a summons to the solicitors of the respective parties to attend a hearing of the matters in reference on the 16th day of May, A. D. 1870, on which day I was attended by Mr. Elkins for the complainants and Mr. Watts for the defendants, and was thereafter attended by said solicitors until June 13, 1870, and at subsequent hearings by Mr. Elkins for complainants and Mr. Clever for defendants.

I have looked into the bill, answers, and exhibits in this cause, and have carefully considered the same.

464 I have also carefully and diligently examined the accounts contained in the said books of account, and the testimony with reference to the same.

I find that Nathan Webb, deceased, had an interest of one-third in the business of the firms of N. Webb & Co. and William H. Moore & Co., and that such interest ceased and determined upon the death of Nathan Webb, October 15th, 1866, at which date the estate of Nathan

Webb, deceased, was entitled to one-third of the net assets of said firms of N. Webb & Co. and W. H. Moore & Co.

The claim of the complainant that Nathan Webb paid into the firm of W. H. Moore & Co., when he became a member thereof, the sum of fifteen thousand dollars, is disallowed.

I find that there is due to the estate of Nathan Webb, deceased, from the defendants William H. Moore and William C. Mitchell, as surviving partners of the said firms of W. H. Moore & Co. and N. Webb & Co., at this date, August 20th, 1870, the sum of ninety-seven thousand five hundred and ninety-six dollars and nineteen cents, ($97,596.19,)
465 as shown by the schedules marked A and B, herewith annexed and forming part of this report, to which reference is respectfully made.

The business of said firms was ostensibly conducted separately and distinctly at the different points where they carried on business, and the accounts of each firm are stated and presented separately and distinctly—Schedule "A" showing the assets and liabilities of the firm of N. Webb & Co. at the date of the death of Nathan Webb, deceased, and the state of the accounts between that firm and the estate of Nathan Webb, deceased, at his death.

Schedule "B" shows the assets and liabilities of the firm of W. H. Moore & Co. at the date of Nathan Webb's death, and the state of the accounts between that firm and the estate of Nathan Webb, deceased, at his death, and also the amount due for interest to this date, and the total amount due by said surviving partners to said estate at this date.

I have, further, to certify and report that, at a hearing in this
466 cause to proceed upon the settlement of the master's report, and for hearing and considering objections to the master's draft report, held on the 18th day of August, A. D. 1870, I was attended by Mr. Elkins, solicitor for the complainants, and Hon. John S. Watts, solicitor for the defendants. At said hearing said solicitor for the complainants filed one objection, which is filed herewith, and which was overruled. The solicitor for the defendants filed twelve objections to said draft report, which are also filed herewith, and which were argued and considered.

The sixth objection of the defendants was allowed in part. The language objected to in the third objection is omitted from the report; the objection was allowed. I overruled the first, second, fourth, fifth, seventh, eighth, ninth, tenth, eleventh, and twelfth objections.

All of which is respectfully submitted.

W'M BREEDEN,
Master in Chancery.

AUGUST 20TH, 1870.

467 Annexed are the schedules "A" and "B" mentioned in the foregoing report:

SCHEDULE "A."

Assets of N. Webb & Co., October 15th, 1866.

1. Good', wares, and merchandize on hand (as per answer of def't Moore, p. 26, and J. Houghton's testimony)....		$78,979 16
2. Debts due and owing to N. Webb & Co...	$76,105 03	
Less amount of "train account" and "expenses account" improperly stated as debts due and owing	$19,883 47	

Actual debts due and owing (def't Moore's answer, p. 16, & Exhibit "A.")		56, 221 56
3. Cash received by W. H. Moore for W. H. Moore & Co., (affidavit of def't Moore, dated Sept. 29, 1869, p. 6.)		10, 258 75
4. Cash received by W. H. Moore for W. H. Moore & Co., for mule train (affidavit of def't Moore, dated Sept. 29, 1869, p. 7)		8, 166 70
5. Cash received by W. H. Moore for W. H. Moore & Co., for mill (def't Moore's answer, p. 39)		2, 000 00
Total assets		$155, 626 17

468 *Liabilities of the firm of N. Webb & Co. at the date of Nathan Webb's death.*

1. Debts due and owing by N. Webb & Co., as stated by def't Moore's answer, p's 24 & 31, and Exhibit A	$61, 462 61	
From which deduct amount of goods, wares, & merchandize sent to Mesilla after the death of Nathan Webb, and which are charged in book of accounts of W. H. Moore & Co., and by them entered in day-book of N. Webb & Co., p. 641, and included in the above amount stated as debts due and owing at N. Webb's death	$16, 337 66	
Actual debts due and owing by N. W. & Co. at N. Webb's death		$45, 124 95
I have allowed on account of worthless and uncollectable debts fifty per cent. of the full amount due and owing to the firm of N. Webb & Co., after deducting therefrom the amount of the accounts of N. Webb & Co. against Nathan Webb & wife as follows, to wit: Total debts due said firm	$76, 105 03	
469 Less accounts of N. Webb & wife as per Exhibits "G" & "H"	$28, 342 57	
Leaves debts due and owing to N. Webb & Co.	$47, 762 46	
Less 50 per cent		23, 881 23
Making a total to be deducted from total assets of		$69, 006 18
Leaves net assets at the date of Nathan Webb's death		$86, 619 99
Nathan Webb's interest (one-third) is		$28, 873 33
Less amount of accounts of N. Webb & Co. against N. Webb and Mrs. Webb		28, 342 57
Leaving amount due the estate of N. Webb, deceased, from the business or assets of N. Webb & Co		$530 76

There is a tract of land known as the Brazito tract, which does not form part of the assets of N. Webb & Co., but belongs jointly to the parties to this suit.

W'M BREEDEN,
Master in Chancery.

AUGUST 20TH, 1870.

470 SCHEDULE "B."

Assets of the firm of W. H. Moore & Co. at date of Nathan Webb's death, October 15th, 1866.

Stock of goods, wares, and merchandize on hand at Fort Union July 2nd, 1866, as per inventory, (see testimony of H. V. Harris).	$182,656 71	
Less sales to Oct. 15, 1866, as per merchandize account from books of Moore, Adams & Co.	87,898 10	
Leaving stock on hand October 15th, 1866		$94,758 61
Debts due and owing to said firm (def't Moore's answer, p. 37, Exhibit "C," and testimony of H. V. Harris)		322,958 77
W. H. Moore & Co.'s interest in mill on Mora River, (def't Moore's answer, p. 30)		7,500 00
Train and mules (testimony of H. V. Harris)		60,000 00
Total assets		$485,217 38

Liabilities of the firm of W. H. Moore & Co. at the date of Nathan Webb's death.

471 Debts due and owing, (def't Moore's answer, p. 37 and Exhibit "C.")	$54,095 14	
Worthless and uncollectable debts allowed as claimed, (def't Moore's answer, p. 38)	$100,000 00	
		$154,095 14
Leaving this amount as net assets of the firm of W. H. Moore & Co. at Nathan Webb's death		$331,122 24
Less amount of capital at the time Webb became a member of the firm, (def't Moore's answer, p. 35.)		16,044 47
Net surplus capital, Oct. 15, 1866		$315,077 77
Nathan Webb's interest, (one third)		105,025 92
Less amount of accounts of W. H. Moore & Co. against N. Webb, (Ex. G.)	4,682 41	
And against Mrs. Webb, (Ex. "H.")	11,044 10	
		15,726 51
This amount due the estate of Nathan Webb from the business and assets of W. H. Moore & Co., Oct. 15, 1866		$89,299 41
To which add amount due from business of N. Webb & Co. at same date		$530 76

Making a total due the estate of Nathan Webb, deceased, October 15th, 1866, of		$89,830 17
472 Interest on the amount from October 15th, 1868, to October 15th, 1869, at 6 %.		$5,389 81
Amount due October 15, 1869		$95,219 98
Less amount paid complainant at that date by the defendants W. H. Moore and W. C. Mitchell, by order of the court.		1,000 00
Leaving amount due		94,219 98
Interest on this amount since October 15, 1869, to August 20, 1870, (this day,)		3,376 21
August 20th, 1870.—Total amount due the estate of Nathan Webb, deceased		$97,596 19

W'M BREEDEN,
Master in Chancery.

AUGUST 20TH, 1870.

On which report is the following endorsement, to wit:

G. E. Huntington, administratrix &c., & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Master's report. Filed
473 in my office this 20th day of August, 1870. W'm Breeden, clerk.

First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington, her husband,
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

Depositions taken before William Breeden, master and commissioner in chancery, to be used in evidence upon the part of the defendants in said cause. Said depositions were begun at the office of the clerk of the district court for the first judicial district of New Mexico, at Santa Fé the 16th day of May, A. D. 1870, at 2 o'clock p. m., and were taken by agreement without notice.

HENRY V. HARRIS, being first duly sworn, upon his oath states:

474 Questions by John S. Watts, attorney for defendants:

Question 1st. What is your name, age, occupation, and place of residence?

Ans. My name is Henry V. Harris. I am 29 years of age; by occupation a clerk. I am clerk for W. H. Moore & Co.; and I reside at Fort Union, New Mexico.

Question 2. How long have you resided at Fort Union, and how long have you been book-keeper and clerk for W. H. Moore & C'. ?

Ans. I have resided at Fort Union since March, 1863, and have been clerk for W. H. Moore & Co. all of that time. I kept the books of the firm about four years of that time, and had charge of the books all the time.

Question 3. Of whom was the firm of W. H. Moore & Co. constituted?

Ans. Of W'm H. Moore, W'm C. Mitchell, and Nathan Webb.

Question 4. Were you acquainted with Nathan Webb, and if so,
475 when did you first become acquainted with him, and what was his occupation then?

Ans. My first acquaintance with Nathan Webb was about the first of March, 1863. He was then book-keeper for W. H. Moore & Co., and was a member of the firm.

Question 5. When did the copartnership of W. H. Moore & Co. commence?

Ans. I have no positive knowledge of when it commenced, but it appears from the books that it commenced the 13th day of June, 1861.

Q. 6. When and where did Nathan Webb die?

Ans. I was in St. Louis when he died; it was in the fall of 1866. I was informed that he died at Franklin, Texas.

Q. 7. Have you had general and free access to the books of W. H. Moore & Co. since you have been in their employ?

Ans. Yes, sir; all the time.

Q. 8. State whether there is entered on the books of W. H. Moore & Co., as among the papers of that firm, any written contract of copartnership.

Ans. I have never seen anything of the kind.

476 Q. 9. State what was the capital stock of the firm of W. H. Moore & Co. when it commenced business, and who furnished that capital.

Ans. As appears by the books as made out by Mr. Webb, on the 13th day of June, 1861, the actual capital was sixteen thousand and forty-four dollars and forty-seven cents.

Q. 10. By whom does that capital appear to have been furnished?

Ans. By Moore and Mitchell.

Q. 11. When did the house of N. Webb & Co. start into business?

Ans. In the spring of 1863.

Q. 12. Where was the house of N. Webb & Co. located and doing business?

Ans. They commenced business in Mesilla, New Mexico. Shortly after commencing they moved to Franklin, Texas, and continued in business there and at Fort Bliss until Webb died. I was never down there; all I know is from information received from others.

477 Q. 13. Of whom was the firm of N. Webb & Co. composed?

Ans. W'm H. Moore, W'm C. Mitchell, and Nathan Webb.

Q. 14. By whom was the capital furnished upon which the business of N. Webb & Co. was started and conducted?

Ans. By W. H. Moore & Co.

Q. 15. Please examine the books of N. Webb & Co., and state if they are books in which the business of that firm was conducted, and under whose control they were from the commencement of the business of N. Webb & Co. until the death of N. Webb.

Ans. The books of N. Webb & Co. are here; they are kept mostly in the handwriting of Mr. Webb, who had control of the business and books of N. Webb & Co.

Q. 16. Please examine Exhibit "A," referred to in the answer of the defendant W'm H. Moore, and state what it is, and from what it was taken.

Ans. Exhibit "A" is a list of debts due to and owing by N.
478 Webb & Co. The left-hand column shows the debts due to the firm, and the right-hand column the debts owing by them, and the exhibit was taken from the books of N. Webb & Co.

Q. 17. What part of that sum of amounts has been collected and paid to W. H. Moore & Co.?

Ans. I cannot state the amount; it is credited to N. Webb & Co. on the books of W. H. Moore, Adams & Co.

Q. 18. What amount was N. Webb & Co. indebted to W. H. Moore & Co. at the date of the death of Webb?

Ans. N. Webb & Co. owed W. H. Moore & Co. a large amount. I cannot state the amount, but the books will show.

Q. 19. Is the firm of N. Webb & Co. still indebted to the firm of W. H. Moore & Co.?

Ans. Yes, sir; about thirty-five thousand dollars; the books will show the amount.

Q. 20. To whom is the unpaid indebtedness of N. Webb & Co. due and owing?

Ans. Almost exclusively to W. H. Moore & Co. I know of no
479 considerable amount due to any other persons.

Q. 21. Please look at Exhibit "L," and state what it is.

Ans. It is a statement of the account of N. Webb with the firm of N. Webb & Co.

Q. 22. What does it amount to?

Ans. The indebtedness of N. Webb & Co., as shown by this exhibit, is twenty-three thousand one hundred and thirty dollars and fifty-nine cents.

Q. 23. Please examine Exhibit "G," filed with the answer of the defendant, W. H. Moore, and state what it is.

Ans. It is a statement of N. Webb's account with W. H. Moore & Co., and with W. H. Moore, Adams & Co., as taken from the books of these two firms.

Q. 24. What is the amount of it?

Ans. It shows an indebtedness of Nathan Webb to the two firms, of forty-six hundred and eighty-two dollars and forty-one cents.

Q. 25. Please examine Exhibit "E," filed with the answer of the defendant W'm H. Moore, and state what it is.

480 Ans. It is a statement of the account of Mrs. G. E. Webb with N. Webb & Co.

Q. 26. What is the amount of that account?

Ans. It shows her to be indebted to the firm of N. Webb & Co. in the sum of five thousand two hundred and eleven dollars and ninety-eight cents.

Q. 27. Please examine Exhibit "H," and state what it is.

Ans. It is a statement of the account of Mrs. G. E. Webb with W. H. Moore & Co., taken from the books of that firm.

Q. 28. Look at Exhibit "F," filed with the papers in this case, and state what it is.

Ans. It is a statement of the account of Joab Houghton with N. Webb & Co.

Q. 29. What does it amount to?

Ans. It shows him to be indebted to the firm of N. Webb & Co. in the sum of three thousand two hundred and eighty dollars and forty-two cents.

(Question and answer objected to.)

Q. 30. Please examine Exhibit "C," filed with the answer of the defendant W. H. Moore, and state what it is.

481 Ans. It is a list of the debts due to and owing by the firm of W. H. Moore & Co. at the time of the death of N. Webb.

Q. 31. Who took charge of and closed out the business of N. Webb & Co. after his death?

Ans. I do not know exactly. Henry J. Cuniffe was in charge of the business for a good while, and closed it out.

Q. 32. Please examine Exhibit "B," filed with the answer of the defendant Moore, and state what it is.

Ans. It is a list of debts collected and debts paid by the firm of W. H. Moore & Co. since the death of N. Webb.

Q. 33. What amount appears to be due by Mrs. G. E. Webb to W. H. Moore & Co., as shown by Exhibit "H?"

Ans. Eleven thousand and forty-four dollars and ten cents.

Q. 34. Do the books of N. Webb & Co., W. H. Moore & Co., W. H. Moore, Adams & Co. appear to have been regularly kept as a true account of the business of said firms?

Ans. They do.

482 Q. 35. Do the books of W. H. Moore & Co. show the cost of the store establishment at Fort Union and the interest and cost of the mill at La Junta?

Ans. They show the cost of the store establishment at Fort Union. They do not show the interest of the firm of W. H. Moore & Co. in the mill at La Junta.

Q. 36. Has the company any interest in the mill, or is it Mr. Moore's individual property?

Ans. I have always understood that W. H. Moore & Co. owned a half interest in the mill. I know of no writings to show that fact.

Q. 37. What is your opinion as to the value of that half interest at the date of Webb's death?

Ans. I cannot say. It is a matter that I know nothing about. I know it has not been a paying institution.

Q. 38. State whether the books of N. Webb & Co. show any purchase of real estate in Doña Aña County, New Mexico.

Ans. Yes.

Q. 39. Do the books of N. Webb & Co. show what consideration was paid for that purchase?

483 Ans. Yes.

Q. 40. What was that consideration?

Ans. Nine thousand six hundred and ninety-seven dollars and thirty-four cents, as I understand it. French and Zabriskie owed N. Webb & Co., and transferred the land mentioned in satisfaction of such indebtedness. Exhibits "I" and "J" are copies of the title-deeds to such property.

Q. 41. Have you made any estimate of the probable amount of bad debts due the firm of W. H. Moore & Co.?

Ans. No, sir; I have not. There is over one hundred thousand dollars of bad or uncollectable debts.

Q. 42. Are there debts due by W. H. Moore & Co. incurred during the time that Nathan Webb was a member of the firm and still unpaid?

Ans. Yes; the books will show the amount.

Cross-examination:

By agreement the further taking of depositions in this cause is
484 continued until the twenty-fourth day of May, 1870, at 10 o'clock a. m.

MAY 24TH, 1870.

By agreement of the parties, by their attorneys, the further taking of

depositions in this cause is continued until May 25th, 1870, at ten o'clock a. m.

Cross-examination of Henry V. Harris. Questions by S. B. Elkins, esq., solicitor for complainant:

Question 1. Examine Exhibit "C," filed with the bill of complaint, and say whether it is a correct copy of the original prepared by you; and is it a correct showing of the profits of the *the* firm of W. H. Moore & Co. from the date of their commencing business up to the 30th day of June, 1863?

Ans. It is a true copy of the original prepared by me, and is a correct statement of the business, taking bad debts into consideration or including bad debts.

485 Question 2. In what years did W. H. Moore & Co. and N. Webb & Co. do the largest business and have the largest profits, from the time of the formation of the copartnership until the death of Webb, during the time you was employed by the firms?

Ans. During the time I have been employed in the firm they did the most business in the years 1863 and 1864 than in any other years. As to the comparative amounts of profits I cannot say.

Q. 3. In your opinion, from what you know of the business of W. H. Moore & Co. and N. Webb & Co., was their business as large or larger during the last half of the year 1863, and the years 1864, 1865, and 1866, and the profits as great or greater during that time as from the time of the formation of the copartnership until the balance-sheet, Exhibit "C," was taken?

Ans. The business was larger and more extensive; but I do not think the profits or gains were as great.

486 Q. 4. Were the profits quite as great, or how near did they approximate to being as great, during the time mentioned, as prior to that time?

Ans. I think they were quite or very nearly as great.

Question 5. Since the year 1864, have the books of W. H. Moore & Co. at Fort Union been kept regularly up to the time of the death of Webb?

Ans. They have.

Q. 6. Have the books been posted since this suit was commenced? I mean have the books been added to or changed. Have new entries been made?

Ans. Yes; a number of entries have been made.

Q. 7. How much did Moore & Mitchell draw out on their own private accounts, from the formation of the copartnership until the death of Webb, from the firm business, as appears by the books?

Ans. Mr. Moore drew out about twenty thousand dollars and Mr. Mitchell about five thousand dollars. This is the amount drawn out by them in excess of credits given them.

487 Q. 8. Mr. Harris, there is a credit on May 1st, 1867, to Mr. Mitchell of $65,717.18. Please explain this credit; and also explain the debit $59,182.79 against Mr. Mitchell, September 4th, 1864.

Ans. The entry of $59,182.79, September 7th, 1864, was money handed to Mr. Mitchell on the eve of his departure for the States, to be turned over to Robert Campbell & Co. in St. Louis, for the credit of W. H. Moore & Co., to pay their debts in St. Louis, and said amount of money was delivered to Robert Campbell & Co. by Mr. Mitchell, on September 26th, 1864, as shown by the statement of Robert Campbell & Co.'s account. The above amount together with three vouchers for

flour and corn, amounting to $6,669.10 sent by mail to W. C. Mitchell, October 20th, 1864, make up the credit of $65,717.18 placed to the credit of W. C. Mitchell on the books of W. H. Moore & Co., May 1st, 1867, and this amount of $65,717.18 appears to be $154.71 less than the amount charged to Mitchell as above stated, and which amount
488 I suppose he used for his own private purposes. Those entries should have been made in the winter of 1864, instead of May 1st, 1867.

Q. 9. Turn to Capt. W. H. Bell's account and explain the debit charge of $68,684.20, and the charge of $17,605.20, and also explain when this account of Capt. Bell's was closed, and the entry on the credit side made August 10th, 1868, of $12,573.90.

Ans. The entry of $68,684.20 to the debit of Capt. Bell is a transfer of that amount from his account to the credit of "mill account," and the amount is placed to the credit of "mill account" on the books of W. H. Moore & Co. Said sum was for flour, wheat, and corn-meal delivered to the commissary department, principally at Fort Sumner, New Mexico. The entry of $17,605.20 to the debit of Capt. W. H. Bell is a transfer of that amount to the credit of the account of "corn adventure," and the amount is placed to the credit of "corn adventure."
489 The entry of $12,573.90, August 10th, 1868, to the credit of Capt. W. H. Bell, is for two vouchers amounting to $1,523.90 which he returned to us on account of some error, and for his note for $11,050.00, for money loaned him and charged to his account on the books of W. H. Moore & Co. as follows: February 22, 1865, $10,450.00; April 11th, 1865, $450.00; May 22d 1866, $150.00. The account was closed August 10th, 1868, as appears from the books.

Q. 10. It appears on the books that S. Selligman & Bro. sold W. H. Moore & Co. a bill of goods amounting to $43,690.40 on the 15th day of June, 1863; for whom were these goods, and how is it that they were charged to N. Webb & Co., August 10th, 1868, over five years after the transaction?

Ans. That bill of goods was purchased of S. Seligman & Bro. for N. Webb & Co., and shipped to them and received by them. I made no entry of the transaction at the time the trade was made, because
490 I did not know how the goods would come out when received by N. Webb & Co. Webb received the goods and claimed a difference of a few hundred dollars. I do not recollect the amount, exactly. After this suit was commenced, in order to close the account of W. H. Moore & Co., and S. Seligman & Bro., and Seligman & Bro. being entitled to the credit, and Webb having received the goods, I made the entry. I do not remember whether I credited Seligman & Bro. with the amount claimed by Seligman & Bro., or the amount admitted by Webb.

Q. 11. In order to close up these books have you ever found it necessary to make any entries from memory?

Ans. I have not.

Q. 12. For how long a time have accounts been left open on the books that should have been closed?

Ans. From three to five years.

Q. 13. Are the books now closed as nearly as they can be, or
491 what is the condition of the books of W. H. Moore & Co. and N. Webb & Co. at this time?

Ans. They are as nearly closed as can well be, or as is necessary for a settlement, except the mill account.

Q. 14. Who posted the books of N. Webb & Co. after the death of N. Webb?

Ans. I do not know who kept them at Franklin, after Webb's death; after they were brought to Fort Union, in examining the account of W. H. Moore & Co. I found many entries that should have been made to the debit and credit of Moore & Co., and made them and posted them. The books will show what was done.

Q. 15. Examine the day-book of N. Webb & Co., beginning at page 636, and to page six hundred and forty-five, and state when the entries on said pages were made, by whom, how many years' transactions do they embrace; are the same items and accounts charged in the books of W. H. Moore & Co. against N. Webb & Co., and does this ac-
492 count include the private account of N. Webb and Mrs. Webb's private account as embraced in Exhibit "H," filed with defendant Moore's answer?

Ans. The entries on the pages referred to were made by me, I think, in the spring of 1869, after the books came up from El Paso. They embrace the transactions of nearly four years; the largest sum is for debts due in St. Louis by N. Webb & Co., which were paid by W. H. Moore & Co. The same items and accounts are charged on the books of W. H. Moore & Co. against N. Webb & Co.; the books correspond, and these entries were made by me from the books of W. H. Moore & Co. This account does not include N. Webb's or Mrs. Webb's private account. By an oversight of mine the day-book was not dated.

Q. 16. Were any goods sent to Franklin after Webb's death, and who had charge of the business there after his death, and if goods were
493 sent, who took charge of them, and what was the amount of such goods?

Ans. Goods were sent to Franklin after Webb's death; Cuniffe had charge of the business as agent of the surviving partners, he took charge of the goods; I think they amounted to about ($15,000) fifteen thousand dollars.

Q. 17. Did N. Webb & Co. do business directly with eastern houses in the purchase of goods and remittance of money, or did they do business with W. H. Moore & Co. only?

Ans. Mr. Mitchell brought, I reckon, upwards of $100,000 for N. Webb & Co. and they were marked N. Webb & Co., and shipped to them from St. Louis, where the goods were purchased. This amount was for the whole time of the existence of the firm of N. Webb & Co. The notes of N. Webb & Co. were given, but W. H. Moore & Co. did the settling and made all the payments.

Q. 18. When did Mr. Adams go into the firm of W. H. Moore &
494 Co.; was any account of stock taken at that time?

Ans. Mr. Adams became a member of the firm of W. H. Moore & Co. on the 2nd day of July, 1866; there was an account of stock which amounted to one hundred and eighty-two thousand six hundred and fifty-six dollars and seventy-one cents, including the stone house and buildings, but did not include the mill or mill property, or the train; Adams had nothing to do with the mill or train. The account only included the property at Fort Union.

Q. 19. About the time of Webb's death what was the value of the mule train of W. H. Moore & Co.?

Ans. There were thirty or thirty-two wagons, and about two hundred and fifty mules; I think a fair estimate of the value of the train was sixty thousand dollars at the time of Webb's death.

495 Q. 20. When was the flouring-mill on the Mora River built; to whom did it belong; what did it cost, if you know; what was it worth at the time of Webb's death; what were the profits of the mill;

was it constantly running, and were large contracts filled from that mill?

Ans. The mill referred to was built in 1863; it belongs to the firm of W. H. Moore & Co. and William Kroenig. My impression is that the firm own a half interest, and Mr. Kroenig a half interest. I think the mill and mill property cost about thirty thousand dollars; and I think it was worth the amount it cost. At the time of Webb's death I do not think the profits were a cent—that is yet to be ascertained however. It has been kept constantly running since it was built. A number of large contracts for flour and wheat-meal were filled from the mill.

By agreement the further taking of testimony in this case is con-
496 tinued until to-morrow morning, May 26th, 1870.

MAY 26TH, 1870.

Ques. 21. State, if you know, when Mr. Moore built a house for his residence on the Mora River near the mill, and what is the value of the house, with all the out-houses, corrals, improvements, conveniences, and appurtenances; and what did they cost?

Ans. Mr. Moore commenced building the house referred to in the spring of 1863, and completed his residence during that year, and has made various improvements about the premises at various times since 1863. I know nothing of the cost of the property, and have no idea of its value.

(Question and answer objected to.)

Question 22. Do you know of your own knowledge, from the admissions of Mr. Moore, or in any other way, the amount of money expended by Mr. Moore, or W. H. Moore & Co., or Moore & Mitchell, since the death of Webb, in mining operations in and about Elizebethtown, including stock in the ditch, and the amount expended on the
497 copper mine?

Ans. I know the amount of such expenditures, of my own knowledge, to be about the sum of seventy thousand dollars, as follows: About forty-five thousand in stock in the Moreno ditch in the name of W. H. Moore & Co., and a debt due from the ditch company of twenty thousand dollars, and about five thousand dollars invested in the copper mine.

Re-examination:

Q. 1. Please explain the facts of the case upon which Exhibit "C," the balance-sheet referred to in the complainant's bill, is based, and state whether it is an actual or apparent statement of profits.

Ans. The balance-sheet referred to is more of an apparent than an actual statement of profits, because a large amount of the debts that were included in that balance-sheet or statement, and considered good at that time, have since proved to be worthless, and of which in
498 my opinion about fifty thousand dollars was utterly uncollectable and worthless. I think that is a low estimate.

Q. 2. Were there or not any balance-sheet, other than the one referred to as Exhibit "C," ever made out during the time you were employed by the firm of W. H. Moore & Co.?

Ans. No other balance-sheet was ever made out.

Q. 3. Could correct annual balance-sheets of the business of W. H. Moore & Co., and W. H. Moore, Adams & Co., have been made from the books after the 13th of June, 1863, and sent to Mr. N. Webb at Franklin, before his death, without your knowledge and assistance?

Ans. No, sir.

Q. 4. You stated in your original examination that the books of W. H. Moore & Co. and N. Webb & Co. were correctly kept, and in your cross-examination you state that entries were made on the books to
499 close accounts years after the time when they should have been entered. Please explain the cause of such omission and delay.

Ans. The omissions and delays were owing to various reasons. There was no object in omitting the entries. A great portion of the time I was occupied at other branches of the business, and at other times negligent, and no one is to blame for the delay but myself.

Q. 5. Were any entries made on said books that were erroneous or untrue, or not rightly required to be entered to explain and keep correct the business of said firms with one another, and the rest of mankind?

Ans. I know of none.

Q. 6. What was the character of the account of Capt. N. H. Bell, to which your attention has been called—a private account or an account as chief commissary for the Department of New Mexico, U. S. Army?

Ans. The entire account is an official account with him as chief
500 commissary of the Department of New Mexico, excepting the sum of $11,050.00, which amount stands charged against him in said account, and he is also credited by his note in said account for this sum. The above sum of money was loaned him by W. H. Moore & Co., and retained by him out of funds due from the Commissary Department to W. H. Moore & Co. for supplies furnished at Fort Sumner, N. M., in 1865.

Q. 7. Please examine Exhibit "N" filed with the answer of the defendant, W. H. Moore, and state what further charge should be entered on said account against Mrs. G. E. Huntington, formerly Mrs. G. E. Webb, as having taken place since said exhibit was taken from the books and filed herein?

Ans. Since said exhibit was taken from the books, the sum of one thousand dollars has been paid her by order of the court.

Q. 8. For what purpose was the $15,000.00 worth of goods sent
501 to Franklin since the death of N. Webb, sent there?

Ans. Those goods were principally staple dry goods and groceries, and were sent there to complete the assortment and assist in selling the stock of goods then on hand belonging to the firm of N. Webb & Co.

Q. 9. You state the number and value of the mules and wagons at the date of the death of H. Webb. Please state what become of said wagons and mules.

Ans. W. H. Moore & Co. still own the entire train, excepting one hundred and fifty-five head of the mules, which were stolen by the Cheyenne Indians about one year ago.

Q. 10. You have stated the amount of stock of goods and buildings at Fort Union to have been $182,656.71, at the time C. W. Adams became a member of the firm. Please state whether a large portion of said goods, wares, and merchandize has not been bought on credit and were unpaid for at the time?

502 Ans. Nearly all of such goods, wares, and merchandize were purchased on credit, and that W. H. Moore & Co. owed on said goods, I think about or near one hundred thousand dollars.

Q. 11. Have the debts of N. Webb & Co. been all paid; and if not, to whom are the unpaid debts of N. Webb & Co. due and owing?

Ans. I think the debts of N. Webb & Co. have all been paid, excepting the indebtedness of said firm to W. H. Moore & Co.

Q. 12. On a final settlement of all the business of N. Webb & Co., what amount of profit or loss will result from the business of said firm?

Ans. There will be a loss of about thirty-five thousand dollars.

Q. 14. Upon whom will said loss fall?

Ans. On the members of the two firms of W. H. Moore & Co. and N. Webb & Co.

Q. 15. Please explain why the mill account has remained unclosed and uncertain on the books of W. H. Moore & Co.

503 Ans. From the fact that Mr. Kronig, one of the partners in the mill, claims that there has been a large amount of flour and wheat-meal furnished to the Government, and for which we have never been paid, and that he has a large account against the mill for wheat furnished and work done that has never been entered on the books of W. H. Moore & Co.

Q. 16. Please state if the books of W. H. Moore & Co. show when Mr. N. Webb was first occupied in the business; how long he was occupied; in what capacity; and at what compensation.

Ans. The books show that Mr. N. Webb was employed as clerk and book-keeper, from some time in 1859 until the spring of 1861, at a salary of fifteen hundred dollars per annum.

Q. 17. Please state the entire amount drawn out of the firms of W. H. Moore & Co., W. H. Moore, Adams & Co., and N. Webb & Co.,

504 by N. Webb, during his life-time, for his private use, as appears from the books.

Ans. The amount is $27,813.00.

Q. 18. Please state the entire amount drawn out of the firms of W. H. Moore & Co., W. H. Moore, Adams & Co., and N. Webb & Co., by Mrs. G. E. Webb, now Mrs. G. E. Huntington, for her own private use and the use of the estate of N. Webb & Co., as appears from the books.

Ans. The sum of $17,256.08.

Q. 19. Please state the entire amount taken by Joab Houghton, temporary administrator of the estate of N. Webb, from the establishment of N. Webb & Co., and appropriated to his own proper use and to the use of the estate of N. Webb, deceased, as appears from the books.

(Q. and A. objected to.)

Ans. The sum of $3,208.45.

Q. 20. According to the books of the firm of W. H. Moore & Co., what is the state of the accounts of Joab Houghton with said firm?

(Q. & A. objected to.)

505 Ans. They show him to be indebted to the firm. The books show the amount.

Q. 21. Did Nathan Webb die without de'cendants?

Ans. I do not know of any children left by him.

Q. 22. Was his mother living at the date of his death? And if so, where is her reputed residence?

Ans. I have been informed that she is living, and resides in the State of Iowa.

Testimony of Henry V. Harris closed.

UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, master and commissioner in chancery for the first judicial district of said Territory, do hereby certify that the foregoing deposition was taken before me, at my office in Santa Fé, county of

506 Santa Fé, and Territory of New Mexico; that said deposition was taken by agreement of the solicitors of the parties, who were

present throughout the examination, and that said depositions were commenced on the 16th day of May, A. D. 1870, and concluded on the 26th day of May, A. D. 1870, and that the above-named Henry V. Harris was, before testifying, duly sworn by me, in the above-entitled cause, to testify the truth, the whole truth, and nothing but the truth, and that his foregoing deposition was reduced to writing by me.

Witness my hand and seal this 1st day of June, A. D. 1870.

W'M BREEDEN, [SEAL.]
Master and Commissioner in Chancery.

On which said paper is the following endorsement, to wit:

507 Gertrude E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Chancery. Filed in my office this 1st day of June, 1870. W'm Breeden, clerk.

HUNTINGTON & WIFE *vs.* MOORE & MITCHELL. } Chancery.

The defendants, W'm H. Moore and William C. Mitchell, object to the swearing, examination, & competency of Joab Houghton as a witness in this case, for the reason that Joab Houghton, the proposed witness, is a party to the record in this case, being a defendant to the cross-bill of Moore & Mitchell, and having answered, under oath, that cross-bill. The said Joab Houghton, being a party on the record against whom a decree is asked, is not a competent witness in the case, and his examination is objected to, and a motion will be made in court to suppress his deposition.

J. S. WATTS,
Att'y for Moore & Mitchell.

On which said paper is the following endorsement, to wit:

508 G. E. Huntington & wife vs. W'm H. Moore & W'm C. Mitchell. Filed in my office this 1st day of June, 1870. W'm Breeden, clerk.

First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON AND DAVID L. Huntington, her husband, *vs.* W'M H. MOORE AND W'M C. MITCHELL. } Chancery.

Depositions taken before William Breeden, master and commissioner in chancery, to be used in evidence on the part of the complainants in said cause. Said depositions were begun at the office of the
579 clerk of the district court for the first judicial district of New Mexico, at Santa Fé, at nine o'clock a. m., of Wednesday, June 1st, 1870, and were taken by agreement of the parties without formal notice.

JOAB HOUGHTON, being first duly sworn, upon his oath states:

Questions by S. B. Elkins, solicitor for complainants:

Q. 1. Please state your name, age, occupation and place of residence.

Ans. My name is Joab Houghton. My age is 57 years. I am a lawyer by profession, and reside at Santa Fé, New Mexico.

Q. 2. Do you know the defendants in this suit, and did you know Nathan Webb, now deceased, in his life-time, and if so, where and how long?

Ans. I know the defendants in this suit, and I knew Nathan Webb, deceased, in his life-time, in New Mexico and Texas, since 1860.

510 Q. 3. From the time that Nathan Webb entered into the co-partnership of W. H. Moore & Co. and N. Webb & Co., until the time of his death, were you closely and particularly acquainted with his and the defendant's business transactions as partners?

Ans. I have frequently been at their several mercantile establishments at Fort Union, Tecalote, Franklin, Texas, and Fort Bliss. I have been in the establishments, and have done business for them, and have frequently been consulted by them in regard to their business.

Q. 4. From your relations with them as aforesaid, your various conversations with said partners and their admissions, and especially what you know from your close acquaintance with the business of said co-partners, until the death of Nathan Webb, what would you judge was the interest of said Webb, in the co-partnership of W. H. Moore & Co. and N. Webb & Co.?

(Question and answer objected to.)

511 Ans. From my relations with Nathan Webb and the defendants, W. H. Moore and W. C. Mitchell, and my conversations with them, I have been fully impressed with the idea and belief that since some time in 1861 that Nathan Webb had a full and equal interest in the firm of W'm H. Moore & Co., as he had also in 1863 in the firm of N. Webb & Co., until the time of his death.

Q. 5. State if Webb ever made any statements to you in his life-time as to his interest in said firms; and if so, what were those statements as to his interest, and what was the general and universal belief, if you know it, in the communities where they did business, as to Webb's interest in said firms.

(Question and answer objected to.)

Ans. I have frequently heard Nathan Webb, in his life-time, at various times and places, as for instance at Fort Union and Santa Fé, and Franklin, Texas, state that he was an equal and full partner in both concerns, with W'm H. Moore and W'm C. Mitchell; that is to

512 say, the firm of W. H. Moore & Co., at Fort Union, New Mexico, and all the various branches and ventures of said firm. In a conversation which I had with him, at Fort Union, in reply to a question of mine, Webb said he should proceed to take charge of the interests of the firm of W'm H. Moore & Co., either at La Mesilla, New Mexico, or whereever it might be determined to locate the establishment. He stated that he preferred remaining at Fort Union, but being the junior partner, having come into the firm later than Mitchell, he felt it incumbent upon him to take charge of the business below, either in southern New Mexico or in Texas; and they all being equal in interest he felt that he could be of more benefit to the concern by locating there. This conversation occurred in the counting-room of the sutler's store at Fort Union, I think, about the beginning of 1863, to the best of my recollection. W'm H. Moore was in the room. He took no part in the conversation, and I am not aware whether he heard what was said or not.

513 In a conversation which I had with N. Webb at Franklin, Texas, in August, 1865, he, Webb, stated that the firm of N. Webb & Co., at Franklin, had been successful in business the preceeding two years and had made money, and that the firm of W. H Moore & Co., at Fort Union, (the other branch of the concern,) had been still more suc-

cessful, of which he was glad, because as an equal partner he felt that he had performed his duty in effecting the success of the firm; that his only apprehension in regard to there being two branches of the same firm was that there would be a carelessness and looseness in the accounts between them. That as an instance he had noticed while recently at Fort Union, that there were large piles of goods-boxes marked N. Webb & Co., and addressed to the establishment in Texas. That he had no doubt that the goods had been disposed of by the concern at Fort Union, and not credited to the concern at Franklin, but that he was not aware that it made any material difference, or would make any material difference in the end, as all interests were equal.

514 Q. 6. State if after the death of Webb you heard a conversation between W. H. Moore, one of the defendants, and Mrs. Webb, now Mrs. Huntington, about the taking out of letters of administration of Mrs. Webb, on the estate of her deceased husband, Nathan Webb; and if so, state what that conversation was.

(Q. and A. objected to.)

Ans. I did not hear any conversation between Mrs. Webb and W'm H. Moore, but I had a conversation with W'm H. Moore on that subject. He said that in order to draw certain moneys from the Quartermaster's and Commissary Departments, and avail himself of other assets, it would be necessary that the receipt should be signed by an administrator, and that Mrs. Webb should take letters of administration.

Q. 7. State if any particular sum was mentioned, and whether such sum was afterwards drawn by Mr. Moore.

Ans. The sum mentioned as being due at Fort Bliss was, to the best of my recollection, about sixteen thousand dollars.

515 Q. 8. How long after Webb's death before you arrived at Franklin?

Ans. I arrived at Franklin the day after his death, in the night.

Q. 9. What action did you, with others, take with regard to the business of Mr. Webb?

Ans. After Mr. Webb's funeral, the next day but one after his death, Mr. Henry Cuniffe, who was a partner in a branch of the business of N. Webb & Co., urged me to take out letters of administration pro tem. Upon being so urged I did take out such letters. I formally took possession of the store at Fort Bliss, retained Mr. Henry Allen and Mr. H. H. Harrison as clerks. I examined generally the goods, wares, and merchandise on hand, but after a consultation with the probate judge concluded to take no inventory of the goods, wares, and merchandise, as it was suggested that the widow, or surviving partner, would very soon be present. I took an account of cash on hand and a list of all

516 the papers, documents, valuables, &c., which were in the safe. There was about three thousand five hundred dollars cash on hand. A cash account was opened by W'm H. Harrison, clerk, under my supervision, and regularly kept.

Q. 10. State what was the amount of goods on hand, their amount or value, if suited to that market, and with ordinary management and prudence what could said goods have been sold for?

Ans. The goods on hand at Franklin and Fort Bliss were estimated by Mr. Cuniffe and myself to be worth, as placed where they were, about eighty thousand dollars, and in my opinion, if handled with skill and ability, they would under ordinary circumstances have brought more than this sum. The stock consisted mainly of substantial articles selected purposely for sale in a sutler's store. Besides there were fancy

articles and dry goods to a large amount, selected purposely for that market.

517 Q. 11. State if you are a judge of the quality of the goods then on hand; if in your life-time you have dealt largely in such goods, and have been a merchant in New Mexico; and if so, for how long a time?

Ans. I was engaged in merchandizing in New Mexico from 1844 to 1848 to the extent of some fifty thousand dollars; in 1846 and 1847 to the amount of about one hundred thousand dollars. From my experience I think myself tolerably able to judge quantities and qualities of goods.

Q. 12. State whether you ever saw the original of "C," filed with the billof complaint, being a balance-sheet; if so, state when, where, and under what circumstances you first saw it.

Ans. I have seen said original. I found it in a small bureau drawer, in what had been the bedroom of Mr. and Mrs. Webb, in his house at Fort Bliss, as near as I can recollect, about a week after Webb's death, when I was engaged in removing the household effect of Mr. and Mrs. Webb from Fort Bliss to her house in Franklin. From the

518 appearance of the key-holes and drawers the bureau had evidently been broken or pryed open. It contained Mrs. Webb's private clothing and trinkets, and clothing of her child, all rumpled up, and some few papers scattered through the drawers. One of them was the statement referred to, Exhibit "C." There were also some other papers, letters, and accounts.

Q. 13. State, if you know, where the wife of N. Webb, the complainant in this suit, was at the time of his death. How far from Franklin, and how long after his death did she arrive at Franklin?

Ans. She was at the house of her father, Capt. Shoemaker, at Fort Union, New Mexico, as I have every reason to believe, and do believe, about four hundred and fifty miles from Franklin. Nathan Webb died on the 15th day of October, 1866, and Mrs. Webb, the complainant in this suit, arrived in Franklin about the 9th of December following.

Q. 14. Please examine Exhibits E and H, and state if any

519 charges therein against Mrs. Webb are erroneous. State to what extent, what are they, and what deductions should be made.

Ans. I notice, upon an examination of Exhibit "E," that the following items charged to Mrs. Webb on said exhibit should, to the best of my knowledge and belief, be transferred from Mrs. Webb's private accounts and charged to the firm of N. Webb & Co. or to the estate of N. Webb, deceased, to wit: In George Palmer's account, four hundred and forty-seven $\frac{95}{100}$ dollars; in Rosario's account, seventy dollars; Judge W. P. Bacon's account, two hundred and twenty-seven dollars; M. Aranda's account, ninety dollars; A. Harnick's account, two hundred and seventy dollars; note and interest of Mrs. A. C. Houghton, two thousand two hundred and eighty dollars; State taxes paid to Collectors Addis and Allen, (the larger part to be deducted,) one hundred and seventy one dollars. Total deduction from Exhibit "E"

520 four thousand three hundred and fifty-six $\frac{62}{100}$ dollars. And in Exhibit "H," in accounts of Mrs. G. E. Webb with H. J. Cuniffe, the following deductions should be made, and charged in the same manner as above: In account from December 18, 1866, to January 31, 1867, Rosario's account, five dollars; same, five dollars; same, forty-three dollars; Lent & Gillett, twenty-three $\frac{50}{100}$ dollars. The account from January 29th to March 2nd, 1867: Cash paid Rosario's, one hundred and forty-seven dollars and fifty cents; John S. Thayer, five hun-

dred and thirty-seven dollars; J. L. Johnson, five hundred and eighty-one dollars; Judge W. P. Bacon, five hundred and ninety-eight dollars. In account of April and May, 1867: Cash paid Doctor McKey, sixty-eight $\frac{30}{100}$ dollars. Account of May, June, and August: A. Harnick, mill account, ninety-two $\frac{63}{100}$ dollars. Account for May: Cash paid Doctor Oliver, five hundred and nine $\frac{90}{100}$ dollars. Total amount of deductions from Exhibit "H," five thousand and twelve $\frac{43}{100}$ dollars,
521 making a total of deductions from Exhibits "E" and "H," six thousand three hundred and sixty-nine $\frac{05}{100}$ dollars.

Cross-examination:

Questions by Hon. John S. Watts, solicitors for defendants:

Q. 1. What is your relationship to Mrs. Huntington, the complainant in this case?

Ans. Mrs. Huntington is my wife's sister.

Q. 2. Have you been, and are you still, her constant and confidential legal adviser and director in all matters connected with this suit?

Ans. I have been her adviser in many things in regard to this suit. Her regular counsel are S. B. Elkins and Theodore D. Wheaton. With them she entrusted her case, and under their direction she acts entirely since their appointment.

Q. 3. Are you not now, and have you not been, the constant
522 medium of communication and direction between the complainant and her counsel, Messrs. Elkins and Wheaton?

Ans. I am not now; but have been heretofore occasionally, but not constantly. She communicates with her counsel direct; they sometimes consult me.

Q. 4. Have you not until recently been the leading counsel in the complainant's case?

Ans. I have never been the leading counsel in the case.

Q. 5. Have you already received, or do you expect to receive, any fee or compensation, either directly or indirectly, for the services rendered by you?

Ans. I have never received anything in the way of a fee from Mrs. Webb, nor do I ever expect to receive anything from her in the shape of a fee. The subject of a fee has never been mentioned to me, and none offered to me.

Q. 6. In your answer to the cross-bill herein you state that by
523 agreement with Nathan Webb, the house and lot in El Paso, Texas, in which you lived, was bidd off by him for you, and that you paid for the same. Now please to state when, where, how much, and to whom you made payment for said house and lot.

(Question and answer objected to because this is a matter between W. H. Moore & Co. and Joab Houghton, and the complainant in this case has nothing to do with it. Question waived for the present by Judge Watts.)

Q. 6. Did you prepare and have Mrs. Nathan Webb copy off in her handwriting a disclaimer for Mrs. Sarah Webb as to any interest in the estate of her son, Nathan Webb, deceased, and have it sent to her by Mrs. Nathan Webb, with an urgent request that she sign it?

Ans. I decline to answer the question, because what I did was in the capacity of counsel or attorney.

Q. 7. Were the conversations which you have detailed as have
524 taken place between Nathan Webb and yourself, and the disclosures made, made to you as an attorney or not?

Ans. They were not. I was not Mr. Webb's attorney at the time.

Q. 8. Please examine paper marked X, and state in whose handwriting is the body of said paper, and in whose handwriting is the endorsement on the back of it.

Ans. The handwriting in the body of the paper is that of G. E. Huntington; the endorsements on the paper are in my own handwriting.

Q. 9. Was the money taken by you out of the estate of N. Webb & Co., as temporary administrator, the money of N. Webb & Co. or the private funds of N. Webb?

Ans. It was the funds of N. Webb & Co., which was in the possession of Webb at the time of his death.

Q. 10. What do you mean by its being in possession of N. Webb
525 at the time of his death? Do you mean that it was in his hands as an individual, or in the hands of N. Webb & Co. as a firm?

Ans. It was in the hands of Nathan Webb at the time of his death as the only member of the firm of N. Webb & Co. there present. It was money of the firm of N. Webb & Co., and not Mr. Webb's private funds.

Q. 11. Did you use that money, or any portion of it, in payment of the expenses of taking care of the property, and did you appropriate the residue not so used to the payment of the individual debts of the estate of N. Webb, deceased?

Ans. The money was used by me as administrator pro tem. for the immediate requirements of the estate of the deceased and for the conducting and taking care of the business.

Q. 12. How much did you pay of that money for conducting and taking care of the business, and to whom did you pay it?

Ans. I do not recollect how much was so paid out. Clerks and
526 servants were paid and the daily expenses of the business.

Q. 13. How much of that money did you receive for your services?

Ans. I received, as allowed by the probate court, as administrator pro tem. and custodian of the property, one thousand dollars.

Q. 14. Please explain why you did not render an account of the money paid to servants and clerks as above stated.

Ans. Their accounts were a matter of daily entry in the store, and there stand, or should stand, entered in the cash account.

Q. 15. In your settlement with the probate court of your business as administrator pro. tem., was there a balance due from you of five hundred and four $\frac{50}{100}$ dollars? And, if so, whose money was it and what did you do with it?

Ans. I held it as my money, subject to a future settlement with W'm H. Moore and W'm C. Mitchell.

527 Q. 16. Is it your custom to take the money of N. Webb & Co. to pay debts of W. H. Moore & Co.?

Ans. No; the money belonged equally to the three partners, and was used by me in that light.

Q. 17. By what authority did you take the money of N. Webb & Co. and use it as the money of N. Webb?

Ans. By virtue of power and authority on me conferred by letters of administration pro tem, and custodianship of property to me granted on the 19th day of October, A. D. 1866, by A. H. French, county judge of El Paso County, Texas.

Q. 18. Did you consider temporary letters of administration upon the estate of N. Webb, deceased, gave you the authority to take whatever you might see fit of the money and property of N. Webb & Co. and

appropriate it to the individual wants and necessities of the estate of N. Webb, deceased?

Ans. I do; and the laws of the State of Texas contemplate such authority.

528 Q. 19. What was your occupation, and where did you reside during your temporary custodianship of the estate of N. Webb, deceased?

Ans. My family resided in El Paso County, Texas, and during my term as administrator, to the best of my recollection, I was absent but once. I was associate justice of the supreme court of the Territory of New Mexico and judge of the third judicial district of said Territory.

Q. 20. Have you ever presented your account to Moore and Mitchell, surviving partners of the firm of N. Webb & Co., for payment for your services as custodian of the estate of N. Webb, deceased? And, if so, when and what is the amount of that account?

Ans. I have never presented any account.

Q. 21. Did Moore and Mitchell, after the death of Nathan Webb, ever at any time request or engage you to attend to any business of N. Webb & Co. for them as surviving partners? And, if so, when and what business?

129 Ans. None whatever, that I can recollect.

Q. 22. Did you ever set up claim or demand that Moore and Mitchell owed you anything for services as temporary administrator of the estate of N. Webb, deceased, until you put forward such claim in your answer to their cross-bill?

(Question objected to by complainant's solicitor because the question is not pertinent to the issue in the suit in which the witness is sworn to testify, viz, the suit of Gertrude E. Huntington and David L. Huntington, her husband, vs. W'm H. Moore and W'm C. Mitchell, but pertains to matters put in issue by the cross-bill of said W'm H. Moore and W'm C. Mitchell, filed against Gertrude E. Webb and Joab Houghton, the witness, and their answers to said cross-bill; it is claimed by the complainants' solicitors that a seperate suit was commenced by the cross-bill aforesaid, to which suit the witness, Joab

530 Houghton, is a party and cannot be called upon to testify, and that he has not been sworn to testify in that suit, and no order has been made joining the two suits aforesaid or directing that they be conducted as one suit.

The witness, Joab Houghton, for the above reasons, refuses to answer the question, and the commissioner, sustaining the view of the case above stated, understands that he has no authority to require an answer, and therefore declines to do so.)

Q. 23. What has become of the deed executed to Nathan Webb, deceased, by Abraham Cutler, marshal, for lot No. 31 in block No. 5, in El Paso, Texas?

Ans. It is in my possession.

Q. 24. Please produce that deed.

Ans. I shall not do so.

Q. 25. Does that deed state who paid the consideration for that house and lot? And, if so, who does it state paid it?

531 Ans. I decline answering the question for the same reason that I declined answering question No. 22.

Q. 26. Did you not, as judge, order to be placed on file at the November term, 1867, of the United States district court for the 3rd judicial district, a report of Abraham Cutler, marshal, in which he stated that

he had sold lot No. 31, in block 5, in El Paso, Texas, to Nathan Webb, and had been paid by Nathan Webb therefor the sum of one thousand six hundred and eighty dollars?

Ans. There was a report put on file of the sales made, and I believe also of amounts paid for property sold in El Paso County, Texas.

Q. 27. You state in your examination that the note of Mrs. Ann C. Houghton for two thousand dollars is erroneously charged to Mrs. G. E. Webb. Please state to whom it should be charged to make it right.

Ans. It should be charged to N. Webb & Co., as I found it
532 there at Franklin, Texas, charged against Mrs. A. C. Houghton on the books of the firm, and held against her by the firm of N. Webb & Co.

Q. 28. Is that note paid, or is it still due and owing?

Ans. I do not know positively, but my impression is that it has not been paid. Whether it is due and owing, or whether it has been otherwise arranged, I do not know.

Q. 29. Do you know where that note is now?

Ans. I do not.

Q. 30. Don't you know that Mrs. Webb requested that note to be given to her and the amount charged to her account, and that it was given to her and the amount so charged to her account?

Ans. Of my own knowledge I do not. I have heard from another party that Mrs. Webb had requested the possession of that note. Whether it was delivered to her or not I do not know. I never heard Mrs. Webb say anything about it.

533 Q. 31. Who owed the debt of Geo. Palmer of nine hundred and fifty-one dollars?

Ans. I do not know. I only know that it is improperly charged to Mrs. Webb.

Q. 32. Do you know what Rosario's account was for?

Ans. My understanding is that the account of Palmer should be charged to N. Webb & Co., and Rosario was a servant of N. Webb and attended at the house of N. Webb and at the store, and his account should be charged to N. Webb & Co. This is my impression.

Q. 33. State what the account of N. P. Bacon for two hundred and twenty-seven dollars was for?

Ans. It was part of an account of Judge Bacon's allowed to him for services and expenses as agent under a power of attorney from the administrator pro tem. to go to San Antonio, Texas, and bring back from there property which had been left by N. Webb when he passed that way in the spring of 1866, on his way to the States, and to de-
534 fray the expenses which had accumulated on the property.

Q. 34. Was the property you allude to the property of N. Webb & Co., or the private property of N. Webb?

Ans. I understood it to be property of the firm, except a pair of horses and a buggy, which I believe were claimed by Mrs. Webb as having been given to her by N. Webb in his life-time.

Q. 35. As you employed him and had funds of the firm in your hands, why did you not pay him?

Ans. I paid him in part as administrator pro tem. The item mentioned was a book-account which he owed N. Webb & Co., and with the amount of which he was credited on account of said services and expenses.

Q. 36. Who took charge of the estate of N. Webb, deceased, after your retirement as temporary custodian?

appropriate it to the individual wants and necessities of the estate of N. Webb, deceased?

Ans. I do; and the laws of the State of Texas contemplate such authority.

528 Q. 19. What was your occupation, and where did you reside during your temporary custodianship of the estate of N. Webb, deceased?

Ans. My family resided in El Paso County, Texas, and during my term as administrator, to the best of my recollection, I was absent but once. I was associate justice of the supreme court of the Territory of New Mexico and judge of the third judicial district of said Territory.

Q. 20. Have you ever presented your account to Moore and Mitchell, surviving partners of the firm of N. Webb & Co., for payment for your services as custodian of the estate of N. Webb, deceased? And, if so, when and what is the amount of that account?

Ans. I have never presented any account.

Q. 21. Did Moore and Mitchell, after the death of Nathan Webb, ever at any time request or engage you to attend to any business of N. Webb & Co. for them as surviving partners? And, if so, when and what business?

129 Ans. None whatever, that I can recollect.

Q. 22. Did you ever set up claim or demand that Moore and Mitchell owed you anything for services as temporary administrator of the estate of N. Webb, deceased, until you put forward such claim in your answer to their cross-bill?

(Question objected to by complainant's solicitor because the question is not pertinent to the issue in the suit in which the witness is sworn to testify, viz, the suit of Gertrude E. Huntington and David L. Huntington, her husband, vs. W'm H. Moore and W'm C. Mitchell, but pertains to matters put in issue by the cross-bill of said W'm H. Moore and W'm C. Mitchell, filed against Gertrude E. Webb and Joab Houghton, the witness, and their answers to said cross-bill; it is claimed by the complainants' solicitors that a seperate suit was commenced by the cross-bill aforesaid, to which suit the witness, Joab

530 Houghton, is a party and cannot be called upon to testify, and that he has not been sworn to testify in that suit, and no order has been made joining the two suits aforesaid or directing that they be conducted as one suit.

The witness, Joab Houghton, for the above reasons, refuses to answer the question, and the commissioner, sustaining the view of the case above stated, understands that he has no authority to require an answer, and therefore declines to do so.)

Q. 23. What has become of the deed executed to Nathan Webb, deceased, by Abraham Cutler, marshal, for lot No. 31 in block No. 5, in El Paso, Texas?

Ans. It is in my possession.

Q. 24. Please produce that deed.

Ans. I shall not do so.

Q. 25. Does that deed state who paid the consideration for that house and lot? And, if so, who does it state paid it?

531 Ans. I decline answering the question for the same reason that I declined answering question No. 22.

Q. 26. Did you not, as judge, order to be placed on file at the November term, 1867, of the United States district court for the 3rd judicial district, a report of Abraham Cutler, marshal, in which he stated that

he had sold lot No. 31, in block 5, in El Paso, Texas, to Nathan Webb, and had been paid by Nathan Webb therefor the sum of one thousand six hundred and eighty dollars?

Ans. There was a report put on file of the sales made, and I believe also of amounts paid for property sold in El Paso County, Texas.

Q. 27. You state in your examination that the note of Mrs. Ann C. Houghton for two thousand dollars is erroneously charged to Mrs. G. E. Webb. Please state to whom it should be charged to make it right.

Ans. It should be charged to N. Webb & Co., as I found it
532 there at Franklin, Texas, charged against Mrs. A. C. Houghton on the books of the firm, and held against her by the firm of N. Webb & Co.

Q. 28. Is that note paid, or is it still due and owing?

Ans. I do not know positively, but my impression is that it has not been paid. Whether it is due and owing, or whether it has been otherwise arranged, I do not know.

Q. 29. Do you know where that note is now?

Ans. I do not.

Q. 30. Don't you know that Mrs. Webb requested that note to be given to her and the amount charged to her account, and that it was given to her and the amount so charged to her account?

Ans. Of my own knowledge I do not. I have heard from another party that Mrs. Webb had requested the possession of that note. Whether it was delivered to her or not I do not know. I never heard Mrs. Webb say anything about it.

533 Q. 31. Who owed the debt of Geo. Palmer of nine hundred and fifty-one dollars?

Ans. I do not know. I only know that it is improperly charged to Mrs. Webb.

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Ans. My understanding is that the account of Palmer should be charged to N. Webb & Co., and Rosario was a servant of N. Webb and attended at the house of N. Webb and at the store, and his account should be charged to N. Webb & Co. This is my impression.

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Ans. I paid him in part as administrator pro tem. The item mentioned was a book-account which he owed N. Webb & Co., and with the amount of which he was credited on account of said services and expenses.

Q. 36. Who took charge of the estate of N. Webb, deceased, after your retirement as temporary custodian?

Ans. There was no custodian designated or appointed by the
535 probate court; the property was taken possession of by the surviving partner, W'm H. Moore, and the widow of N. Webb, under letters of administration.

Q. 37. Do you know whether the administratrix of N. Webb, deceased, has ever made any report of the amount received and expended, as such administratrix, to the probate court of El Paso County, Texas?

Ans. The whole property of N. Webb & Co., being in the possession of W'm H. Moore, surviving partner, and his agents, and he, Moore, refusing a settlement of the copartnership business, it was impossible for the administratrix to make a settlement with the probate court, or to make any proper report, therefore no settlement and no report was made to the probate court of El Paso County, Texas. In consequence of the refusal of W'm H. Moore to make such settlement, this suit was commenced. I mean by the property the share N. Webb possessed in the firms of W'm H. Moore & Co. and N. Webb & Co., being all the property he possessed at his death, to my knowledge.

536 Q. 38. What impossibility prevented the administratrix of N. Webb, deceased, from accounting with the probate court in El Paso, Texas, for the few thousands obtained by Mrs. Webb before and since the commencement of this suit?

Ans. I am not aware that anything was obtained by way of settlement or otherwise than from W'm H. Moore.

Q. 39. When did Mrs. Webb, administratrix of N. Webb, deceased, leave El Paso, Texas, and has she ever returned?

Ans. She left El Paso, Texas, sometime in September, 1867, and has never returned.

Q. 40. Do you not know that she has been removed by the probate judge of El Paso, County, Texas, as administratrix of the estate of N. Webb, deceased, and duly notified of that removal?

Ans. In consequence of Henry J. Cuniffe, one of the securities
537 on her administration bond, having left El Paso, Texas, and W'm H. Moore, the other security upon said bond, asking to be released as security, her letters of administration were revoked, I believe, in October, 1869.

Q 41. Where does she now reside?

Ans. I am not positive where she resides; when last heard from, herself and her husband were about to remove to the city of New York.

Q. 42. In all the confidential conversations with Nathan Webb, deceased, did he state to you where he came from, and whether he was married or unmarried?

Ans. In various conversations with him he stated his place of nativity, but which I cannot now call to mind. I understood that he came here from Missouri. He never informed me whether he was married or unmarried before his marriage with Miss Gertrude E. Shoemaker, the complainant in this suit.

Q. 43. Did not Nathan Webb in some of those conversations
538 state to you that he lived at Lafayette, Indiana; that he married Marcella S. Smith; that he ran away from there on account of a difficulty with another man's wife; and that his wife applied for and obtained a divorce from him for abandonment and adultery?

(Q. and A. objected to.)

Ans. He might possibly have stated to me that he had lived in La-

fayette, Indiana, but as to the other matters referred to I never heard a word from him or any one else.

Q. 44. Please look at paper marked "Y," and state what it purports to be.

(Q. and A. objected to.)

Ans. It purports to be an abstract from the Tip'*a*canoe County record, of the State of Indiana, of a suit for divorce by Marcella S. Webb against Nathan Webb.

Q. 45. Do you consider N. Webb & Co. responsible for the bill of the doctor attending N. Webb in his last sickness?

Ans. Of course not.

539 Q. 46. If Mrs. Webb, as administratrix of the estate N. Webb, deceased, received money of N. Webb & Co. to pay that doctor bill, what error is there in charging it to her?

Ans. The error is in charging it to her individually instead of to her as administratrix of the estate of N. Webb, deceased.

Q. 47. As Mrs. Webb, as wife of N. Webb, deceased, and as administratrix of the estate of N. Webb were one and the same person, is it not properly chargeable to her?

Ans. I surely think not; it should be charged against the estate.

Q. 48. Is anybody to account to N. Webb & Co. for that money; and, if so, who?

Ans. The estate of N. Webb, deceased, necessarily answers for the money.

Q. 49. Do you charge cash furnished an estate to the estate or to the administrator of the estate?

Ans. My , as a lawyer, is that charging money against an
539 estate is equivalent to charging it to the person who has charge of the estate.

Q. 50. How does your account stand with W'm H. Moore & Co.?

Ans. I do not know; the books will show.

Q. 51. Are you not indebted on the books in the sum of four hundred dollars, and is it not justly due and owing?

Ans. The money is justly due and owing, but not from me; W'm H. Moore & Co. advanced me four hundred dollars on a draft of W'm Craig on Charles F. Shoemaker—amount of the draft six hundred and seventy-five dollars—*with* draft W'm H. Moore & Co. still hold, unless they have collected it. Should they fail to collect it of the drawee or the drawer I am justly responsible and liable for the amount.

Q. 52. Please explain how W. H. Moore & Co. advanced you that money on that draft.

Ans. It was advanced through Major Howe Watts, Paymaster U. S. A., in some way.

541 Q. 53. Did you not retain that amount of money out of a draft collected for W'm H. Moore & Co. and then send this draft to W. H. Moore & Co. to re-imburse it?

Ans. No. I do not recollect anything of that kind in the transaction.

Q. 54. Do you know whether that draft has ever been paid?

Ans. I do not.

Q. 55. Did you send that draft to W'm H. Moore & Co. as so much money?

Ans. No. I sent it to be collected.

Q. 56. Have you ever objected to the correctness of that charge against you on the books of W. H. Moore & Co.

Ans. No. I have offered to give my own [illegible] and take up the draft.

Q. 57. Please point out a single item in the account of Mrs. N. Webb that was owing by N. Webb & Co.

542 Ans. As I have before testified, without an examination of the day-book and ledger, to which these items should be charged, whether to the estate of N. Webb, deceased, or to the firm of N. Webb & Co., I cannot definitely determine.

Q. 58. Do you know who furnished Mrs. Webb with the supposed fact that Webb entered the firm of W. H. Moore & Co. in 1859, as stated in the bill of complaint in this cause?

Ans. I do not.

Q. 59. Do you know who furnished Mrs. Webb with the supposed fact that Nathan Webb put into the business of W. H. Moore & Co. the sum of fifteen thousand dollars cash?

Ans. I do not know of my own knowledge. I have been told by Mrs. Webb that her husband, Nathan Webb, told her so in his lifetime.

Q. 60. Did W'm H. Moore and W'm C. Mitchell ever, at any time, state to you that Nathan Webb was a full and equal partner with them in all of their business?

543 Ans. They never did.

Q. 61. Was the bill of the complainant in this case first roughly drafted by you, and then copied and enlarged by other counsel in the case?

Ans. No; I made no draft of said bill of complaint.

Q. 62. Did Mr. Webb, in his frequent conversations with you, state that the terms of his copartnership with W'm H. Moore & W'm C. Mitchell, had been reduced to writing and signed by the parties?

Ans. No.

Q. 63. Please define with more certainty your position in this case, as to whether you are or are not one of the solicitors of the complainant?

Ans. I consider myself as standing in the position of advising counsel to the actual counsel of the complainant, but have hardly considered myself as counsel of record.

544 Q. 64. Please examine paper No. 9, and state what it is?

Ans. It is an affidavit signed by myself, filed in this cause on the 2nd day of October, 1869.

Q. 65. You state that you were extensively engaged in merchandizing in New Mexico, from 1844 to 1849, and have given your mercantile opinion of the value of the goods of N. Webb & Co., on hand at the date of Webb's death. Please state whether you was a success or a failure as a merchant.

Ans. The firm of E. Leitensdorffe & Co., to which I belonged during the time mentioned, failed in business, but I never attributed the failure to myself.

Q. 66. On the 14th day of December, 1867, what position did you occupy, and what office did you hold?

Ans. Associate justice of the supreme court of New Mexico.

Q. 67. Look at paper marked "Z," and state whether it is a true

545 copy of the statement of the settlement of your account as administrator pro tem of the estate of N. Webb, deceased.

Ans. I believe it to be a true copy.

Q. 68. Look at paper marked "W," and state if it is a correct copy of the bond given by you as such temporary administrator.

Ans. To the best of my recollection it is a true copy.

Q. 69. You state that sixteen thousand dollars in drafts, belonging to N. Webb & Co., was received by W. H. Moore in El Paso in December, 1866, and has not been accounted for. Don't you know that nearly half of that money belonged to Henry Cuniffe as a partner in the mill adventure?

Ans. I stated that about sixteen thousand dollars—the exact sum not recollected—was drawn by W'm H. Moore from the Government Departments at Fort Bliss in December, 1866. I did not say, nor mean to be understood, that it had not been accounted for, as I did not know.

546 Henry J. Cuniffe told me he had an interest in those vouchers on account of flour.

Q. 70. After receiving said drafts, on what date did Mr. Moore leave El Paso?

Ans. Either on the evening or morning of December 25th, 1866.

Q. 71. Please look at entry on page six hundred and twenty-eight of the day-book of N. Webb & Co., read the entry and state whether it does not fairly account for the said sixteen thousand dollars, after deducting the interest of Henry Cuniffe?

Ans. I find the following entry on said page of the day-book, in Mr. Moore's handwriting, I believe, under date of December 24th, 1866, on page 628:

W'm H. Moore & Co.,	Dr.
To cash of H. Cuniffe	$1,000 00
To cash of H. Cuniffe, mill adventure	$5,000 00
To cash of Henry Cuniffe, Treasury notes and vouchers	$4,258 75
Making the sum of	$10,258 75

547 Whether it fairly accounts for the item of $16,000.00 or not, or whether it refers to the drafts and vouchers making up said sum of $16,000.00, or not, I cannot state.

Q. 72. Might not the vouchers alluded to by you have been fifteen thousand two hundred and fifty-eight $\frac{75}{100}$ dollars, instead of sixteen thousand dollars?

Ans. They might have been for a greater or less sum than sixteen thousand dollars. I cannot state positively.

Q. 73. Did you ever take any inventory of the goods, wares, and merchandize of N. Webb & Co?

Ans. I have already stated that I did not, and gave the reasons why I did not.

Q. 74. Do you know whether Nathan Webb had a mother living at the date of his death, and, if so, where did she live, and what was her name?

Ans. I have been informed that he had a mother living at the time of his death at Burlington, State of Iowa. I think her name was Sarah Webb.

548 Q. 75. Has Mrs. Gertrude E. Webb married again since the death of her husband, N. Webb, and, if so, when and to whom?

Ans. She has, I think about the last of September 1869, in the city of Santa Fé, to Doctor David L. Huntington.

Q. 76. Do you know whether any letters of administration have been taken out in Mora County, New Mexico, upon the estate of Nathan Webb, deceased, since her said marriage.

Ans. No letters have been taken out, to my knowledge, since her marriage.

Q. 77. Please state if any settlement or report was ever made at any time before or since said marriage, by Mrs. G. E. Webb, administratrix of the estate of N. Webb, deceased, to the probate court of Mora Coun-

ty, New Mexico, showing what she had received and disbursed as said administratrix of N. Webb, deceased?

Ans. A report was made at the November term, 1869, of the probate court for the county of Mora, Territory of New Mexico, to the ef-
549 fect that Gertrude E. Webb, administratrix, then Huntington, not having the possession of any of the effects or property belonging to the estate of her deceased husband, Nathan Webb, but being debarred from the possession thereof by the surviving partners of the two firms of W. H. Moore & Co. and N. Webb & Co., W'm H. Moore and W'm C. Mitchell, was unable to report or give any account of her administration, and therefore prayed an order of said court that she be required to present a statement of her administration of the estate of Nathan Webb, deceased, upon the final determination and decree in the suit now pend'ing in the district court of Gertrude E. Webb vs. W'm H. Moore and W'm C. Mitchell, in chancery, which order was granted by the court, and I here file an abstract from the record of said court, marked "V," containing said order.

Q. 78. Please state who prepared that report, and whether it was ever signed or sworn to by Mrs. Webb?

550 Ans. I prepared the report, and it was signed and sworn to, to the best of my recollection, by Mrs. Webb, then Huntington.

Q. 79. Please state by what accident that report omitted to charge Mrs. Webb with the thousand dollars received by her from W. H. Moore & Co., on the order of the court, prior to the making of that report?

Ans. It was not omitted by accident. It was deemed that no report such as was required by law could be made; no report of accounts.

Q. 80. Would it not have been proper and prudent, in her complaints of inability to get anything out of W. H. Moore & Co., to have credited them with that thousand dollars?

Ans. I do not think it would have been either prudent or proper.

Q. 81. In your answer to the cross-bill herein, you state that by agreement with N. Webb, lot No. 31, in block No. 5, in the town of El
551 Paso, was bid off by him, for you, and that all that was paid for the same was paid by you. Now please to state when, where, how much and to whom you made payment for said lot.

(Question objected to by solicitor for the complainant, and objection sustained by commissioner, who decides the question improper, and declines to require an answer, because the question relates solely to matters in issue under the cross bill and the answers thereto, and is not pertinent to the suit in which the witness was sworn to testify, and no order of court having been made joining the suits, or directing that the suit under the original bill and answers and the cross-suit proceed and be brought on to a hearing together, the original suit and the cross-suit are distinct and separate suits and so proceed. Although the suit commenced by the cross-bill is a dependant and auxillary suit, an order of court is necessary directing that they proceed in that manner be-
552 fore they can be treated as one suit and be heard together. And further it is decided that, while Joab Houghton is competent to testify in the original cause, he is not a competent witness in the cross-cause to which he is a party, and in which a decree is prayed for against him. To which decision the solicitor for the defendants excepts.)

Q. 82. Are you acquainted with the capacity, business habits, and general character of Henry J. Cuniffe as a merchant?

Ans. I am acquainted with his general reputation, which is that of a man above the average in ability as a merchant; and in character, for probity, and honor, and good business habits he stands undoubted.

Q. 83. After the death of N. Webb, and after your retirement as administrator pro tem., in whose hands was placed the goods, wares, and merchandize of N. Webb & Co. to be sold and disposed of?

Ans. In the hands of Henry J. Cuniffe.

553 Q. 84. Please examine page 627 of the day-book of N. Webb & Co., under date of December 21st, 1866, read the entry charging Mrs. G. E. Webb with principal and interest of note of Mrs. A. C. Houghton for two thousand two hundred and eighty dollars, and state whether that note was then delivered to Mrs. G. E. Webb; and, if so, what has become of it?

Ans. I have examined the entry on page 627, and find it as stated in the question. I do not know whether the note referred to was delivered to Mrs. Webb or not, and do not know what has become of it. As I stated in answer to a former question, I have heard that Mrs. Webb had proposed to take that note, but do not know whether that intention was carried into effect or not.

J. HOUGHTON.

SATURDAY, *June 4th*, 1870.

WILLIAM R. SHOEMAKER, being duly sworn, upon his oath states:

554 Questions by S. B. Elkins, esq., solicitor for complainant:

Q. 1. State if you knew Nathan Webb in his lifetime; and, if so, when, where, and how long and if you know the defendants in this suit, W'm H. Moore and W'm C. Mitchell; and, if so, how long have you known them? Also state your age, occupation, and place of residence.

Ans. I knew Nathen Webb from the time he came to New Mexico, in 1857, I think, until a short time prior to his death. I knew him at Fort Union, N. M., and also during the time of his residence at Franklin, Texas. I have known William H. Moore since 1849 until the present time. Mr. Mitchell I have known about the same length of time, as near as I can remember. I am sixty years of age; an officer of the United States Army, stationed at the arsenal near Fort Union, N. M.

555 Q. 2. State, if you know, when Nathan Webb entered the firm of W. H. Moore & Co.; and where, and who were the members of the firm; also, do you know when the firm of N. Webb & Co. was formed; and, if so, when, and where did they do business, and who were the members of that firm?

Ans. To the best of my knowledge and belief, Mr. Webb entered the firm of W. H. Moore & Co. in 1861, at Fort Union, New Mexico. The members of the firm were W'm H. Moore and W'm C. Mitchell before Mr. Webb became a member. The firm of W. H. Moore & Co. then formed, was composed of W'm H. Moore, W'm C. Mitchell, and Nathan Webb. The firm of N. Webb & Co. was formed, I think, in the spring of 1863. My impression is that it was formed to do business at Fort Bliss. They afterward removed to and continued business at Franklin, Texas. The members of the firm were W'm H. Moore, W'm C. Mitchell, and Nathan Webb.

556 Q. 3. Have you ever at any time since the formation of the copartnership of W. H. Moore & Co. and N. Webb & Co., had any conversation with Moore or Mitchell, or both of them, as to the interest of Nathan Webb, in his life time, in said firms; if so, state when and where and fully what was said by said W. H. Moore and W'm C. Mitchell.

Ans. I have had conversation with both W'm H. Moore and W'm C. Mitchell on that subject during the time that they were most prosperous, after the copartnership was formed, and while Webb was a member of the firm, and while the mill at La Junta was in operation—I think about 1862. I had conversation with Mr. Moore, in which he stated that the mill was the most profitable part of the business at that time; that the mill was not a private speculation of himself and Mr. Kronig, but that it was a joint affair of W'm H. Moore & Co. and Mr. Kronig. Moore stated to me that he had no interests seperate from his partners; that he divided everything with them, and ex-
557 pected them to do the same with him. These were, as near as I can recollect, the words of his conversation. This took place at or near the store at Fort Union. He said, further, "I never even buy a pair of buggy-horses unless I consider them the property of the firm—the joint property of myself, Mr. Mitchell, and Mr. Webb." Mr. Moore and myself were very intimate at that time, and he was very confidential with me. He stated also that there were no distinct interests of the members of the firm, but that their interests were alike. Mr. Moore never stated to me that the interests of the members of the firm were equal, but that they were all jointly interested in all the business of the firm. Neither did he ever state to me that the interests were not equal until a year and a half after Webb's death, and I had never, until that time, heard anything to raise a doubt of Webb's equal interest in the business. Just after the August term, 1869, of the district
558 court for Mora County, I had a conversation with W'm C. Mitchell. He had then been staying at Fort Union, at their store, for several weeks. I asked him wheet'er they were likely to settle the business with Mrs. Webb, (now Mrs. Huntington,) the complainant in this suit, and give her her share of the estate, or whether it was to involve a long suit at law. He declared to me that he could give me no satisfactory answer. I asked him "Why." He informed me that Mr. Moore would not talk to him on business of that kind; that he had tried 'everal times to get Mr. Moore to explain to him how matters stood; that all the information he could get was through Mr. Harris, the bookkeeper. I then asked him how the three members of the firm stood; whether there was any partnership agreement. He replied there was not a written agreement, to his knowledge. I then asked him how they commenced business together. He replied, "We just went in—we three." I then asked him how he expected to come out. He
559 said he did not know. I then asked him, if he died, what would become of his interests, and how would his widow ever get anything. He replied that he supposed they would have to depend upon Mr. Moore's honor. I then asked him would he use any influence towards a compromise whereby the widow of Nathan Webb should get what was justly coming to her. He replied that as soon as he could get Mr. Moore to talk to him on the business that he would go and see Mrs. Webb and give her more satisfactory information than he could at that time. Since that neither myself 'or Mrs. Webb have received any information, to my knowledge, from Mr. Mitchell, according to his promise. I have stated the conversation with Mr. Mitchell, as nearly as I can recollect, in the exact words. I sought the interview, and made it a formal one, and asked Mr. Mitchell if he desired to converse on the subject, and he said he did. I was acting at the time as agent of my daughter, the complainant in this case, and I deemed this con-
560 versation important, and recollect it very distinctly. Mr. Mitchell told me he wanted me to give him all the information I had on

the subject as he had been unable to get it elsewhere. I did so, and related to him the conversations that I had with W'm H. Moore at the time of Mr. Webb's death, and up to the time that my interviews with him ceased.

Q. 4. In the conversation just referred to, did or did not Mr. Mitchell state positively that there was no agreement of copartnership whatever, but that the partners just went in; or what did he say?

(Q. objected to as leading.)

Ans. He did; I asked whether there was any partnership agreement between them; whether there were any written articles of partnership, or how did they go into business together; to which he replied: "Well, we just went in." He said there was no partnership agreement
561 that he knew anything about. I remember his answers and statements distinctly, for I asked him particularly and considered it important.

Q. 5. Please examine paper handed you marked "No. 1," and state if you ever saw the original; and, if so, what did you do with it?

(Q. and A. objected to.)

Ans. I handed the original letter, of which this is a copy, to Mr. Moore in person, about the time of its date, September 1st, 1868.

Q. 6. Examine paper handed you, marked No. "2," and state what it purports to be.

Ans. It purports to be a reply to the letter, of which the paper marked No. 1 is a copy.

Q. 7. Examine paper handed you, marked No. 3, and state if you know the handwriting; and, if so, whose is it, and to whom is the letter directed?

Ans. I know the handwriting and signature to be that of W'm
562 H. Moore; the letter is addressed to Mr. F. M. Jennings, whom I also knew.

Q. 8. Examine paper handed you, marked "No. 4;" by whom is it signed? State if you know to whom it is addressed, and what you know of the letter.

(Q. and A. objected to.)

Ans. The letter is signed by Mr. Cha's H. Phelps, of Burlington, Iowa, a lawyer of high standing. It is addressed to Dr. Yeakle, his brother-in-law, of Lafayette, Indiana. It was enclosing the letter marked No. 3, for the use and information of his sister-in-law, Mrs. S. E. Webb; the letters were enclosed to Mrs. Webb by Nathan Webb's sister, Mrs. Yeakle.

Q. 9. Shortly after Nathan Webb's death, did you have any conversation with W'm H. Moore, at the instance of Mrs. Huntington, then Webb, relative to the condition of the copartnership business? If so, state what Mr. Moore said.

Ans. I had such a conversation with W'm H. Moore as soon as
563 Mr. Webb's death was made known at Fort Union, in the fall of 1866. I went to see Mr. Moore at the request of Mrs. Webb, the complainant in this suit, who was then confined to her bed with sickness and trouble of mind. Mr. Moore told me that as soon as Mrs. Webb could go, he would accompany her to Franklin; he told me to say to Mrs. Webb that he wished her to continue a member of the firm until the next year, in July, when he would be prepared to settle with her as heir to Mr. Webb's share of the property of the firm; he pressed this point, and said that it was as much to her advantage to continue in the firm as it was for his and Mr. Mitchell's to have her do so; he also stated that if she would rely on him to attend to her interests in the firm, and not

put her business at that time into the hands of a lawyer, he pledged his word as a man that he would do her justice; that she should not have cause to regret having placed confidence in him. This he told me
563 to convey to Mrs. Webb, which I did; he further stated that Mrs. Webb should continue in and represent her late husband in the firm, with exactly the same interest undivided and undissolved throughout the whole business transactions of the firm, just as it had been conducted during Mr. Webb's life, until the first day of July, 1867. A few days subsequent to sending this message by me, Mr. Moore called in person and repeated the same to Mrs. Webb in presence of witnesses.

Q. 10. After the first day of July, 1867, did Mrs. Webb call on Moore for a settlement, and if so, what was the result?

Ans. She did, and he put her off; she several times after that called upon him for settlement; at one time stating her desire to leave New Mexico, to which he objected, saying that it would be detrimental to the interests of the firm until after she had settled and become disconnected with it.

565 Q. 11. Please state what you know of Nathan Webb's position in the firm of W. H. Moore & Co., after he became a partner, as to conducting the business, and the attention and energy bestowed on the same by him.

(Q. and A. objected to.)

Ans. I believe that Mr. Webb put about $15,000 cash capital in the firm upon entering it; he told me that he had about that amount; that he debated whether to invest it there or with another person, and finally became a member of that firm, investing all he had. He then took a very active part, in addition to his duties as cashier and book-keeper; he obtained contracts from the Government for the firm whereby they made very large profits without the investment of any capital, but owing to his good business capacity. He was decidedly the most energetic, industrious, able business man of the firm, and devoted all his energies to its business, and was the only member of the firm capable of conducting a business of that magnitude.

566 Q. 12. State if from the time that Webb entered the firm of W. H. Moore & Co., *if* you were closely, particularly, and intimately acquainted with the business of said firm; if so, state if from your relations with Webb, and your various conversations with Moore and Mitchell, and from all you know about the business, what did you deem Webb's interest in said firm to be, and what was the universally received opinion in and about Fort Union as to his interest.

(Q. and A. objected to.)

Ans. I was at their place of business almost daily, and was in the confidence of both Mr. Moore and Mr. Webb; observed their business closely, and knew as much about it as any disinterested person would be likely to know. From all the conversations with the members of the firm I got the impression that Mr. Webb had the same interest that Mr. Moore and Mr. Mitchell had. I never doubted it, and knew that it was the universally received opinion of the officers at the post,
567 as well as that of the citizens in the neighborhood and elsewhere throughout the Territory of New Mexico. I have heard General Carleton speak of Webb's being a third partner in all of the business, both at Fort Union and at Franklin, my relations with him having been very intimate; I was in the habit of writing his business letters when he was commander of the department, and closely connected with all the business firms furnishing supplies to the government of New

Mexico; General Carleton was commander of the Military Department of New Mexico; he was very closely connected and intimately acquainted with the business of W. H. Moore & Co.

Q. 13. What was the character of the business transacted by W. H. Moore & Co. and N. Webb & Co.?

Ans. They were post suttlers at Fort Union, also at Fort Bliss. They carried on a general mercantile business, furnishing by wholesale to several different posts in New Mexico; the' procured contracts
568 and furnished supplies to the Government of the United States; they disbursed large sums of money for the different branches of the United States Government; they paid Government employees, and nearly all of the disbursements of the Quartermaster's Department in New Mexico, during one or two years of the war, was advanced and made by them.

Cross-examination by Hon. John S. Watts, solicitor for the defendants:

MONDAY, *June 6th*, 1870.

Q. 1. What is your relationship to the complainant, G. E. Huntington?

Ans. She is my daughter.

Q. 2. Have you been her managing and consulting agent in the preparation of this suit?

Ans. Yes.

Q. 3. When did you first become acquainted with Nathan Webb; where did he then reside, and what was his occupation?

569 Ans. I first became acquainted with Nathan Webb at Fort Union, New Mexico, about 1856 or 1857; he was book-keeper for George M. Alexander, post sutler at Fort Union.

Q. 4. Was he ever occupied as book-keeper for Moore & Mitchell, prior to his becoming a member of the firm of W. H. Moore & Co.; if so, how long?

Ans. He was from the time he left Alexander until he entered the copartnership; I cannot remember the dates.

Q. 5. What wages was Nathan Webb receiving as clerk for Moore & Mitchell, prior to his entering into copartnership with them?

Ans. I do not know.

Q. 6. How long had Messrs. Moore & Mitchell been doing business as merchants, in New Mexico, before Nathan Webb went into partnership with them?

Ans. I cannot say, positively—for quite a number of years.

570 Q. 7. Did Mr. Webb, at the time he told you he put into the business of W. H. Moore & Co. fifteen thousand dollars cash, say to you how and where he got the fifteen thousand dollars cash to put into said firm?

Ans. No. He told me that he had saved about that amount, and had it ready to invest; he did not tell me where or how he got it.

Q. 8. As Mr. Webb was book-keeper and cashier of the firm of W. H. Moore & Co., and entered himself the capital stock of said firm on the books of said firm, please state if Mr. Nathan Webb explained to you how he omitted to credit himself with the fifteen thousand dollars so stated by him to have been put into the firm by him.

Ans. He never told me anything about it, nor do I know anything about the books, or how they were kept at that time, except that he was the book-keeper.

571 Q. 9. Did Mr. Nathan Webb, in his frequent conversations with

you, state to you where was his previous place of residence, and what had been his previous history and conduct?

Ans. He never went back of his residence, at Memphis, Ten'essee, which I understood to be after he left Lafayette, Indiana, but of this I am not certain. He was in business with McGroety & Hayward, in the southern portion of this Territory, or at El Paso, Texas, just previous to his coming to Mr. Alexander. That is all I know of his history.

Q. 10. Did Mr. Nathan Webb, in his intercourse with you and with your family, represent himself to be a young unmarried man, or did he state that he had been married and divorced from his wife?

(Q. & A. objected to.)

Ans. He never said anything about it.

Q. 11. Was Mr. Nathan Webb occasionally in the habit of drinking intoxicating liquors to excess?

572 (Q. & A. objected to.)

Ans. Oh, yes, he would take a spree every once in awhile, but never to the injury of his business qualifications.

Q. 12. Was or was not Mr. Webb occasionally given to gambling for money heavily?

Ans. Never, to my knowledge.

Q. 13. From the beginning of the firm of N. Webb & Co., at El Paso, Texas, and Fort Bliss, until the death of N. Webb, who managed and controlled the business of N. Webb & Co.?

Ans. N. Webb.

Q. 14. Do you think Nathan Webb managed the business of N. Webb & Co. honestly and fairly, and kept the books of that firm correctly?

(Q. & A. objected to.)

Ans. I have no doubt of it.

Q. 15. Do you know anything about a draft for four hundred dollars given by W'm Craig on Charles Shoemaker, and sent by Judge

573 Joab Houghton to W. H. Moore & Co. in payment of that amount of money belonging to W. H. Moore & Co. in the hands of Joab Houghton, attorney? And, if so, state whether or not that draft has ever been paid.

Ans. I know nothing about it, except there was some transaction of the kind which I heard of, but do not know the particulars.

Q. 16. Ever since you, as the agent of your daughter, failed to get a settlement of her business with W. H. Moore & Co., have you not used your best exertions to ruin and destroy the business of W. H. Moore & Co., and to establish rival stores at Fort Union, and drive them away from the fort, as post traders and suttlers?

Ans. I have not.

Q. 17. Did Mr. Nathan Webb ever state to you that he purchased, at marshal's sale, at El Paso, Texas, and paid for a handsome house and lot, which he intended as a present to Mrs. Ann C. Houghton, his

574 wife's sister?

Ans. He never did.

Q. 18. Please state if you know anything about a note given by Mrs. Ann C. Houghton to N. Webb & Co., for about two thousand dollars, and state whether it is paid or unpaid, and in whose possession it now is.

Ans. I know nothing about it.

Q. 19. In the conversation of W. H. Moore with you, in which he spoke of the profits of the mill, was it the mill at El Paso, Texas, in which Henry J. Cuniffe was a partner, to which he alluded?

Ans. No.

Q. 20. What mill was it?

Ans. The mill at La Junta.

Q. 21. Please state your opinion as to the net profit of the firm of N. Webb & Co., from the time of its commencement up to the death of N. Webb, after all the goods on hand at his death were sold, and the debts paid.

Ans. I can give no information about it.

575 Q. 22. Are you acquainted with Henry J. Cuniffe and his general reputation as a merchant? And if so, state what is his general reputation in the community where he lived as a careful, honest, correct, skillful, and efficient merchant.

Ans. I am. His character and reputation as a merchant is good in every particular.

Q. 23. Have you any personal acquaintance with the mother or sisters of Nathan Webb, deceased?

Ans. I have not.

Q. 24. Did Nathan Webb, in his visit to the States with his wife, take her to see his mother and sisters or not?

(Q. and A. objected to.)

Ans. I believe not.

Q. 25. Was any payment ever made by Mrs. G. E. Webb—now Huntington—to Mrs. Sarah Webb, mother of Nathan Webb, or does Mrs. Huntington claim the entire estate of Nathan Webb, deceased, as belonging to her?

576 Ans. There never was any payment made to Sarah Webb that I know of. Mrs. Huntington claims to be heir to the estate of Nathan Webb, deceased, under the laws of Texas, where he lived and died.

Q. 26. Do you know if Mrs. G. E. Webb copied off and sent to Sarah Webb, with an urgent request to sign it, a disclaimer renouncing her interest and claim to the estate of Nathan Webb, deceased?

Ans. I have no knowledge of it.

Q. 27. When did Mrs. G. E. Webb leave El Paso, Texas, as her place of residence?

Ans. In the summer of 1863 she went there, and left in the fall of 1867. In the mean time she had been on visits to my house on different occasions, but El Paso was her place of residence from 1863 to 1867.

Q. 28. Have any letters of administration been taken out upon
577 the estate of Nathan Webb, deceased, in Mora County, Territory of New Mexico, since the marriage of Mrs. G. E. Webb with Doctor D. L. Huntington, or not?

Ans. No.

Q. 29. Did Mrs. G. E. Webb, prior to her marriage with Doctor Huntington, claim a residence in Mora County, and take out letters of administration upon the estate of Nathan Webb, deceased, or not?

Ans. She took out such letters of administration, but did not claim Mora County as her residence.

W. P. SHOEMAKER.

SAMUEL B. WHEELOCK, being duly sworn, upon his oath states:

Questions by S. B. Elkins, esq., solicitor for complainant:

Q. 1. What is your age, where do you reside, and what is your business?

Ans. My age is twenty-nine years. My residence is Santa Fé, New Mexico, and I am engaged in merchandizing.

578 Q. 2. Did you, in the fall of 1868, go to Fort Union to examine

the books of W. H. Moore & Co. and N. Webb & Co.? If so, state what induced you to go; in what condition did you find the books of said firms?

Ans. I went to Fort Union in September, 1868, at the request of the attorney for the complainant in this cause. I did not see the books of N. Webb & Co. I was told they were yet in El Paso. I examined the books of W. H. Moore & Co., covering the period during which Webb was said to be a partner. I noticed that but few entries had been made during the two preceeding years, and that the books were not closed. I was told that the firm was then using another set of books, which I did not examine.

Q. 3. State whether you are a professional book-keeper, and understand book-keeping.

Ans. I have had several years' practice as book-keeper, and understand the principles of book-keeping.

579 Q. 4. State how long you was examining the books of W. H. Moore & Co., and if you examined them closely, minutely, and particularly.

Ans. I think I was engaged about a week in the examination. I looked through the books pretty thoroughly, and took off a balance-sheet, but was informed that there were many entries yet to be made, which would entirely change their condition. So I went no further, but returned to Santa Fé. I made the examination in company with Mr. Magruder, one of the book-keepers of W. H. Moore & Co.

Q. 5. From what you could learn of the business of said firm, from the statements made by parties in charge of the books, and from the agents of the defendants, did the books at that time show the business of the firm of W. H. Moore & Co. correctly up to the time of the death of Nathan Webb?

(Q. and A. objected to.)

Ans. They did not. I was informed by those in charge of the

580 books that there were many entries necessary to complete and close the books.

Q. 6. What induced you to believe that the books did not show up the business properly?

Ans. There were numerous large accounts open, showing heavy balances, which I believed should be closed, and was informed that they had been closed.

Q. 7. Will you now state some of those unclosed accounts and balances?

Ans. I remember the account of Capt. W. H. Bell, a disbursing officer of the United States, who had then left this Territory, whose account showed a balance of over seventy thousand dollars to his credit. There were several other accounts with balances ranging from five to forty thousand dollars, in which I cannot now recall the names of the parties. Most of these accounts, I was informed by parties in charge, had been squared.

581 Q. 8. Have you examined those books since? If so, state if many of the accounts to which you refer, including the account of Capt. W. H. Bell, have been since closed.

Ans. I have looked at the books recently, and find that Capt. Bell's account, and several of the others referred to, have been since closed.

Q. 9. Would a proper and correct system of book-keeping permit balances of such magnitude, and the accounts unclosed on the books, to exist when they were really settled between the parties?

Ans. I should say not.

Q. 10. If large balances existed at the time you examined the books, and many accounts stood open which should have been closed, could the books have been taken and considered as correct and reliable as to showing the true status of the business of said firm?

Ans. I should say not.

582 Q. 11. From the statements of the book-keepers in charge of said books, and from the entries you saw therein, did you deem the books correct, and had they been regularly kept?

Ans. As far as entries had been made, they appeared to have been made properly and correctly; but, as I have before stated, there were many entries, involving large amounts, which had never been made.

Q. 12. Please examine Capt. W. H. Bell's account on page 555 of the ledger of W. H. Moore & Co., and state if the same stands closed, and state the two last entries on the debit side that close the account.

Ans. The account is now closed. The two last entries are: "To corn adventure, $17,605.20." "To mill, $68,684.20." Both entries are without date.

Q. 13. Now examine page 167 of said ledger, and state if said sum of $68,684.20 stands credited to "mill account," and, if so, do not the books show that said mill must have produced in some way the sum of $68,684.20.

583 Ans. Said sum is so credited, and if the entry is correct the mill must have produced something of that value to entitle it to that credit.

Q. 14. Is it proper in book-keeping to make the two entries referred to by you on the debit side of Captain Bell's account, and the entry on the credit side of the mill account, of sums of such magnitude, without date?

Ans. I should think not.

Q. 15. Could you, from the entries referred to, trace these two transactions, embraced in the entries referred to, back to the day-book and journal, so as to show their full nature and character?

Ans. I could not. There is nothing there to indicate where they are entered in the day-book and journal, or whether they are entered at all.

Q. 16. In order to make these entries proper, correct, and systematic in book-keeping, should they not in some manner refer back to the

584 journal and day-book, so as to give a history of the business embraced in them or not?

(Q. and A. objected to.)

Ans. They should refer to the journal by their date, and by the page from which they were posted.

Q. 17. Finding such entries contained in a set of books, and with no other lights before you but the books, what would you, as a book-keeper, conclude as to their regularity and correctness and that of the books?

Ans. As far as those entries are concerned, I would not consider them as of much or any value, put down as they are without any date or reference. I would not consider them as entitled to any confidence. I would not consider those entries of themselves as sufficient to invalidate those portions of the books that have been correctly kept.

Cross-examination.

Questions by Hon. John S. Watts, solicitor for defendants.

585 Q. 1. When a credit is taken from one account and transferred to another to close it, does it make a particle of difference whether it is dated or not dated, as to the justice or accuracy of the accounts?

Ans. I should think not.

Q. 2. Please state whether you discovered any error; and if so, point it out in closing the account of Capt. Bell.

Ans. I cannot state whether there is any error in the account or not; there is sufficient credit to him to balance the account. I cannot tell whether it is right or wrong.

Q. 3. Please state if any other accounts except those referred to by you, in your direct examination, attracted your criticism.

Ans. I referred to them in my direct examination as numerous accounts. I cannot recollect the number.

Q. 4. Please specify a few.

Ans. I will specify W. H. Cluck & Co.'s account had a debit balance of $19,411.00; Shewsberry, Slemmons & Co., debit balance,
586 $6,087.97; W'm Krœnig, debit balance, $23,525.41; Capt. Davis' account, debit balance, $17,169.79; H. Birmbaune & Co., debit balance, $16,230.39; Solomon Benthur, debit balance, $27,299.71; Capt. Enos, debit balance, $9,814.43; S. McCartney & Co., debit balance, $9,529.87; S. Seligman & Bro., debit balance, $46,059.35; Capt. W. H. Bell, credit balance, $73,715.50; C. R. Morehead & Co., credit balance, $4,191.16. Those are the principal ones and largest amounts.

Q. 5. In a large business with numerous houses, and for a long period of time, is the simple fact that the accounts are unclosed on the books any reason to suspect that the books are erroneous or the accounts wrong?

Ans. Not upon books in current use.

Q. 6. Does the transfer of $68,684.20, from the account of Capt. W. H. Bell to the credit of mill account, show that the mill made a profit of this amount or any part of it?

Ans. No; the mill still stands charged with a large balance.

587 Q. 7. Please refer to the mill account, on page 167 on ledger of W. H. Moore & Co., and state whether the account, as it stands on the books, including the entry of $68,684.20 on the credit side, shows a gain or loss by W. H. Moore & Co. by the mill.

Ans. The accounts shows a loss.

Q. 8. The information detailed by you in your direct examination as coming from the agents and book-keepers of W. H. Moore & Co.—please state the names of such agents and book-keepers.

Ans. A portion of such information I received from Mr. C. B. Magruder and a portion from Mr. Henry V. Harris, both book-keepers in the house of W. H. Moore & Co.

Q. 9. At whose request and in whose employ did you go to Fort Union to examine those books?

Ans. At the request of and in the employ of the complainant, the defendant, W. H. Moore, having consented to allow any one who might be designated by the complainant to examine the books of the
588 firm in connection with some one to be designated by himself.

Q. 10. Did you observe, in all your examination of the books of W. H. Moore & Co., any improper or erroneous entry in any of the accounts examined by you?

Ans. I think not.

Q. 11. Are you acquainted with the general reputation of Henry V. Harris and Charles B. Magruder as accurate and skillful book-keepers and accountants?

Ans. I know nothing about their reputation as accountants.

Q. 12. How long have you been living in New Mexico?

Ans. Four years and a half.

Q. 13. What occupations have Mr. Harris and Mr. Magruder been engaged in since you have resided in New Mexico?

Ans. I believe Mr. Harris has been in the employ of W. H.
589 Moore & Co. as book-keeper, during the whole of that period, and Mr. Magruder has been in the employ of the same firm a portion of the time, and in the employ of other parties, also, as book-keeper.

Q. 14. Do you know of any business house in New Mexico doing an extensive and varied business with branch firms and a large credit business, that keeps all its accounts constantly closed on its books?

Ans. It would be impossible for any house to do it, great or small.

SAMUEL B. WHEELOCK.

UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, clerk of the United States district court for the first judicial district of said Territory, and master and commissioner in chancery, do hereby certify that the above and foregoing depositions were taken before me, at my office in Santa Fé, County of Santa
590 Fé, in said Territory; that said depositions were taken by agreement of the solicitors of the parties, who were present throughout the examination, and that said depositions were commenced on the 1st day of June, A. D. 1870, and closed on the 6th day of June, A. D. 1870, and that the above-named Joab Houghton, W'm R. Shoemaker, and Samuel B. Wheelock were by me sworn, in the above-entitled cause, to testify the truth, the whole truth, and nothing but the truth, and that the foregoing depositions, by them respectively subscribed, were reduced to writing by me.

Witness my hand and seal this 1st day of July, A. D. 1870.

W'M BREEDEN, [SEAL.]
Master and Commissioner in Chancery.

On which depositions is the following endorsement, to wit:

G. E. Huntington et als., vs. W'm H. Moore & W'm C. Mitchell.
591 Depositions. Filed in my office this 21st day of June, 1870. W'm Breeden, clerk.

The following are the papers referred to and identified in the foregoing depositions, to wit:

(W.)

THE STATE OF TEXAS,
County of El Paso:

Know all men by these presents that we, Joab Houghton, as principal, and Henry J. Cuniffe and William W. Mills as securities, are held and firmly bound unto the county judge of El Paso County in the sum of five thousand *of* dollars, for the payment of which, well and truly to be made unto the said county judge, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, signed with our hands and sealed with our seals (the
592 seals being scr*a*wls) the 20th day of October, A. D. 1866.

The condition of this obligation is such that whereas the above-bound Joab Houghton has been appointed administrator pro tem., by the said county judge, of the estate of Nathan Webb, deceased:

Now, if the said Joab Houghton shall well and truly perform all the

duties required of him under said appointment, then this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) J. HOUGHTON. [SEAL.]
(Signed) HENRY J. CUNIFFE. [SEAL.]
(Signed) W. W. MILLS. [SEAL.]

Approved.
(Signed) A. H. FRENCH,
County Judge.

[Internal revenue stamps, $100.00.]

STATE OF TEXAS,
County of El Paso:

I, H. B. Amity, clerk county court of El Paso, Texas, do hereby
593 certify that the foregoing bond is a true and correct copy taken from the county record.

H. B. AMITY, *C. C. C. E. P. C.*

On which said paper is the following endorsement, to wit:

(W.) Copy. Joab Houghton to A. H. French, county judge El Paso County, Texas. Bond.

(V.)

Be it remembered that, heretofore, to wit, on the 3rd day of November, in the year of our Lord one thousand eight hundred and sixty-nine, at a regular term of probate court in and for the county of Mora, and Territory of New Mexico, begun and held at the town of Mora, on the first Monday of November, eighteen hundred and sixty-nine,
594 being the first day of said month, the following entry upon the record of said court was then and there made; which said entry is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO,
County of Mora:

In the probate court within and for the county of Mora. Administration of the estate of Nathan Webb, deceased.

And now comes Teodoro Mignault, who appears as attorney for Mrs. Gertrude E. Huntington, late Mrs. Gertrude E. Webb, and asks an order of this court to be entered that Mrs. Gertrude E. Webb, administratrix, be required to present to this court a statement of the accounts of her administration of the estate of Nathan Webb, deceased, upon the final determination and decree in the suit now pending in the district court, of Gertrude E. Webb versus William H. Moore and
595 William C. Mitchell, in chancery. Upon due consideration of the premises, the court so orders, in accordance with the terms of the petition of said attorney.

TERRITORY OF NEW MEXICO,
County of Mora, ss:

I, Severiano Martinez, clerk of the probate court within and for said county and Territory, do hereby certify that the foregoing is a full, true, and perfect transcript of the entries in the above-entitled case at

the date first above mentioned, and which remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said probate court, at Mora, New Mexico, this third day of November, A. D. 1869.

[SEAL.] SEVERIANO MARTINEZ,
Clerk of the Probate Court.

On which said paper is the following endorsement, to wit:

596 V. Abstract of record Mora probate court. Administration. N. Webb, dec'd. Filed in my office this 2nd day of June, 1869. W'm Breeden, register.

Y.

Pleas held before the Honorable John *Pittle*, sole judge of the Tippecanoe circuit court, in the State of Indiana, and at the April term of said court, in the year of our Lord one thousand eight hundred and fifty-seven, to wit:

MARCELLA S. WEBB
vs.
NATHAN WEBB. } Divorce.

Be it remembered that, at a term of the Tippecanoe circuit court, in the State of Indiana, began and held at the court-house in the city of La Fayette, in the county of Tippecanoe, in said State, on Monday, the sixth day of April, in the year of our Lord, one thousand eight
597 hundred and fifty-seven, it being the first Monday in said month, and on Friday, the forty-seventh judicial day of said term, it being on the 10th day of July, A. D. 1857, and before the Honorable John *Pittel*, sole judge of said court, comes the plaintiff, by Wilson and Gardner, her attorneys, and, on motion, files the following complaint against said defendant, to wit:

Complaint.

THE STATE OF INDIANA,
Tippecanoe County, ss:

In circuit court of said county, at April term, 1857.

MACELLA S. WEBB
vs.
NATHAN WEBB.

Marcella S. Webb complains of Nathan Webb, and says that she, said plaintiff, is a bona fide resident of said county; that, on or about the sixth day of June, A. D. 1855, she, said plaintiff—her maiden name being Marcella Smith—intermarried with said defendant, and with him took up her residence at said county. She further says that, from and
598 after said marriage aforesaid, she, said plaintiff, conducted herself towards said defendant in all things as a dutiful and affectionate wife ought, and continued to reside with said defendant up to the time hereinafter mentioned at the county aforesaid; but she charges that said defendant, unmindful of the duties incumbent upon him as a husband,

and of his marriage vow during the time aforesaid, treated this plaintiff with a cold and cruel neglect, denying her the pleasure of his society, and depriving her of those attentions due, and which she had a right to expect, from a husband; and she further charges that said defendant, on or about the twenty-second day of July, A. D. 1856, abandoned her, said plaintiff, at said county, and left said county, and has never, to her knowledge or belief, returned thereto, or to her, said plaintiff; and that, since that time, she has not received from him any means
599 of support whatever, nor has he provided, or offered to provide her with the same. She further charges, upon information and belief, that said defendant, at various times since their marriage aforesaid, has been guilty of the crime of adultery with various persons to the plaintiff unknown; and said plaintiff says that, by reason of the premises, her affections have become so alienated from said defendant, that no reconciliation can ever be brought about between them; and she prays that the bonds of matrimony now existing between her and said defendant be forever and finally dissolved, and a divorce granted according to the statute in such case made and provided, and for such other and further relief as to the court in the premises shall seem meet.

MARCELLA S. WEBB,
By WILSON & GARDNER,
Her Attorneys.

And comes the said defendant, by Gregory, his attorney, and
600 enters his appearance and waives the issuing and service of process, and files the following answer, to wit:

Answer.

THE STATE OF INDIANA, *Tippecanoe County, ss:*

In circuit court of said county at April term, 1857.

NATHAN WEBB
ads.
MARCELLA S. WEBB.

The said defendant for answer to said complaint says that he denies each and every allegation in said complaint, and prays to be dismissed with his costs.

July 9th, 1857.

ROBERT C. GREGORY.
Att'y for Def't.

And thereupon this cause for trial is submitted to the court, and the court, after hearing the evidence and being fully advised in the premises, do order and judge and decree that the bonds of matrimony existing between the said plaintiff and the said defendant be and the same are by the court dissolved, annulled, and set aside and held for nought, on account of the misconduct of the defendant, according to the statute in such case made and provided, and the court order that the plaint-
601 iff pay the cost and charges herein.

THE STATE OF INDIANA, *Tippecanoe County, ss:*

I, Daniel Royes, clerk of the Tippecanoe civil circuit court in the

State of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record of the proceedings had and judgment and decree rendered in the above and foregoing-entitled cause, as the same appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in La Fayette, on this 5th day of July, A. D. 1869.

[SEAL.] DAN'L ROYES, *Clerk.*

[5-cts. inter. revenue certificate.]

STATE OF INDIANA, *Tippecanoe County, ss:*

602 I, Charles H. Test, president judge of the Tippecanoe civil circuit court within and for the county of Tippecanoe, hereby certify that the foregoing certificate and attestation of Daniel Royes, the clerk of the said Tippecanoe civil circuit court, is in due form of law, as witness my hand this 6th day of July, 1869.

CHARLES H. TEST.

On which said paper is the following endorsement, to wit:

(Y) Filed in my office this 2nd day of June, 1870. W'm Breeden, clerk.

(Z.)

J. Houghton, adm'r pro tem., in ac. with the estate of N. Webb, dec'd. Dr

1866.		
Oct. 20th.	To cash to self	$2,000 00
" 24th.	" " "	200 00
" 30th.	" for Amity	100 00
Nov. 1.	" self	100 00
" 4.	" "	100 00
" 22.	" Dr. Christain	200 00
" "	" self	120 00
		$2,820 00

603 SUPRA.

1866.			Cr.
Oct. 20.	By cash to	W. P. Bacon	1,000 00
Oct. 30.	Do.	H. B. Amity	100 00
Nov. 16.	Do.	A. M. Hunt	10 50
" 22.	Do.	J. M. Lujan, cl'k of probate	5 00
	Do.	Dr. Christian	200 50
			$1,315 50
		Balance favor of estate	$1,504 50
		Allowed by probate court services as adm'r pro tem. and custodian of the property of the estate, from Oct. 20th, to December 20th, 1866	$1,000 00
		Bal. due estate	$504 50

STATE OF TEXAS, *El Paso County:*

Before me, the undersigned, judge of the probate court, personally appeared Joab Houghton, administrator pro tem. of the estate of N. Webb, dec'd, and made oath, and says that the above statement of account is correct, and that the services as administrator pro tem. as custodian of property were performed.

(Signed) J. HOUGHTON.

Sworn and subscribed to before me this the 4th day of December, 1867. Approved.

(Signed) A. H. FRENCH.
Probate Judge, E. P. C. Texas.

(A true copy.)

694 STATE OF TEXAS, *El Paso County:*

I, H. B. Amity, clerk of the probate court for El Paso County, Texas, I hereby certify that the above inventory of the estate of N. Webb, dec'd, is a true and correct copy taken from records of the probate court of El Paso, Texas.

In witness hereof I have this the 21st day of April, 1870, set my hand and affixed my official seal at San Elizario, Texas.

[SEAL.] H. B. AMITY,
C. P. C., E. P. C.

On which said paper is the following endorsement, to wit:

(Z) Copy. Statement of acc't. J. Houghton, ad'r pro tem., with estate of N. Webb, dec'd.

605 (No. 1.)

FORT UNION, N. M., *Sept.* 1, 1868.

W. H. MOORE, Esq.

D'R SIR: By way of further reply to your letter of the ult, I desire to say that I am as anxious as you possibly can be to avoid bringing the business of my husband's estate into court.

And I assure you I have only consulted with counsel owing to the fact that I am required to take some steps as administratrix before the next Oct. term of the probate court for the county of El Paso, State of Texas, and I find it absolutely necessary either to bring suit for a settlement, or that you at once make to me, as administratrix, a statement in the form of an inventory of the amount due the estate, and the condition of the interests of the estate now in your hands, so that I may file the same in the office of the probate court of El Paso County, together with my report.

606 If I can make an inventory, or a partial one, I will evade the forfeiture of my bonds and my removal as administratrix. The time has arrived in which I must do something, and if I cannot file an inventory, or some statement, I must show to the court that I have sued for a settlement. You are well aware from the papers in my hands I cannot make a correct report from all the papers and letters I have in my possession. I can only conclude that my husband's interest was about one hundred and fifty thousand dollars at the time of his decease, but its condition now, etc., I must know from you. You will remember that I took out letters of administration at your instance solely, and now I look to you to assist me in preventing injury to my bondsmen and

my removal, and this you can easily avoid by making the statement above asked for.

Like yourself, and as you know, it has been my greatest desire
607 to avoid going to law, but if I do not show that I am taking some steps, I will be forced to law by the courts of Texas, to the great injury of the estate.

Inasmuch as you have requested me in so earnest a manner not to commence suit, I have this proposition (as a final effort on my part to settle our difference) to submit: That you, immediately on receiving this letter, make to me a statement of the amount of the interest of my husband in the company at the time of his death, & the amount due his estate now, and the condition of the affairs of the copartnership, and especially the time when you will most probably be able to settle with the estate. If you cannot make a correct and exact statement, please approximate to the amount, so that I may be able, in my report, (which, you know, ought now to be made and in the mail,) to state the sum to the probate court.

If you will comply with the above request, either this evening or in the morning, it will determine my action in the premises and re-
608 lieve me of great anxiety; and, in conclusion, allow me to assure you that, above all things, I want to avoid litigation, and only hope you will assist me, as I believe you will, & request a written answer to this.

Respectfully,

GERTRUDE E. WEBB,
Administ'ix, &c.

On which said paper is the following endorsement, to wit:

Copy of a letter address' by Mrs. G. E. Webb, adm'x, to W. H. Moore, about settlement, &c. Sept. 1st, 1868. (No. 1.) G. E. Huntington et al. vs. W. H. Moore et als. Introduced by complainant. Filed June 5th, 1870. W'm Breeden.

609 (No. 2.)

F'T UNION, N. M., *September* 1, 1868.

Mrs. G. E. WEBB,
Fort Union, N. M:

MADAM: Your letter of this date has been received, and I am sorry to say that it will be impossible for me to comply with your request in so short a time. It would give me great pleasure to comply, but as I have not got the books of the Franklin store—not even a list of the accounts—here, I cannot even make an estimate how much the losses down there will be.

After giving the Franklin store c't by the amount of merchandize sent to Tucson, & outstanding debts made by Mr. Cuniffe, there will still be due W. H. Moore & Co. over fifty thousand dollars. Mr. H. J. Cuniffe and myself are your securities, & if we do not require the statement you mention, I see no cause for the short time you name for the statement. I should infer from the tenor of your letter that you
610 wish to enter suit, & force me to do things that *is* not in my power. Mr. Cuniffe & Mr. Harris will go over to see you this evening, & they will give you all the information pos'ible; and just as soon as I can get a statement of the books made out, it will give me pleasure to furnish you every particular of the amount that may be due the heirs of

N. Webb, deceased. If this explanation will not satisfy you, I am sorry to say that the law must take its course.

Your', respectfully,

W. H. MOORE.

On which said paper is the following endorsement, to wit:

Letter. W. H. Moore to Gertrude E. Webb. Sept. 1, 1868. No. 2. Huntington vs. Moore et al. Introduced by complainant. Filed
611 June 5th, 1870. W'm Breeden.

No. 3.

FORT UNION, N. M., *March 1st*, 1869.

Mr. F. M. JENNINGS:

D'R SIR: Knowing that you were well acquainted with my former partner, N. Webb, before he came out to this Territory, and for the interests of his old mother & sisters, I wish that you would give me all the information that is in your power about his former marriage; at what time he was married; the lady's name, and the date of divorce.

I am now about closing up with the estate, and if I do not get
612 the information that I w'ite for, his last wife will receive all that may be due, and if she does, the other heirs will never get one cent.

Now, friend Jennings, for old acquaintance with me, please do me the favor to give me all the information you can in the business, and send to this place at once, and if I can ever reciprocate in any way, don't hesitate to call on me, as I assure you it will give me great pleasure to serve you.

There is nothing of importance transpired out here since you left. Everything is dull, & but little business doing. Capt. Davis is here, and waiting for the spring to open, in order to get the water into the ditch that is now about finished for the Moreno mines. There has been quite a number of new diggings discovered, & the prospect is very good for a large am't of gold to be taken out this spring.

Yours, truly,

W. H. MOORE.

613 On which said paper is the following endorsement, to wit:

No. 3. W. H. Moore to F. M. Jennings. Letter March 1st, 1869. Huntington vs. Moore et al. Introduced by complainant. Filed June 5th, 1870. W'm Breeden, clerk.

(No. 4.)

BURLINGTON, IOWA, *M'ch* 29, '69.

DEAR S'R: I have yours of 25th inst. by this morning's mail.
614 Moore's letter, which I return herewith, is an exact copy of one he wrote some weeks since to gent'n here who showed it to me. I told him how to answer it, & he did.

I am convinced that his object is simply to conjure up some defence against the claim of Nat's widow, & that he doesn't care a rush about his "old mother & sisters."

He evidently knew of Nat's former marriage, & hoped to find some illegality in the divorce, by which he could contest the validity of the second marriage.

It is unaccountable that one who felt so lively an interest in the welfare of his mother & sisters should never have written them that there was something coming to them, but so soon as his widow undertook to secure her interests that he should immediately commence a correspondence with outsiders, respecting & peeping into Nat's domestic affairs. My opinion is that he is a great rascal, & wants to use the name of the family to cheat the widow. If he will come out like a
615 man & inform Mrs. Webb just how much he owes Nat's estate, I may possibly persuade myself that he means to be honest, & not before.

By the general law the statutes of the State where the decedent resided & died determines the distribution of personal property.

By the laws of Texas, where Nat. lived and died, his widow gets all his personalty, unless the law has been changed within a few years—since 1862, I think.

A few weeks since Mr. Stein wrote mother that Mr. Orth had seen a man from New Mex., who said she had an interest there worth looking after.

At her request I answered, giving the result of my examination of the Texas laws, & requesting him to investigate the matter further, & if he found anything worth looking after to attend to it. I also wrote him what Mr. R. Jones advised you. So you had better talk the matter over with him.

616 Ben. Hall has written 2 or 3 letters to New Mex. for mother to parties who knew a great deal about Nat's affairs, but could get no reply. They probably spoke to Moore about it, & he stopped all advices.

Moore is a power in that country, & if Nat's widow gets anything at all she may thank God and not Mr. Moore.

Mother has been quite ill with a bilious attack & pneumonia combined, but is decidedly better, and sitting up to-day.

Four of us were in bed together two days last week with the same disease, but all are improving.

Yours, truly,

CHA'S H. PHELPS.

I omitted to say that the above is written at mother's request, & that she & Ben. Hall agree with my opinion of Moore & his purposes. Ben. is now in N. Y.

On which said paper *in* the following endorsement, to wit:

617 (No. 4.) Introduced by complainant. Charles H. Phelps, at Burlington, Iowa. Filed June 5th, 1870. W'm Breeden, clerk.

618 The Territory of New Mexico to J. A. Loward, probate judge, Greenwood County, Colorado Territory, greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine Henry J. Cuniffe, of said county and Territory, on his corporal oath, as a witness in a certain cause pending in the district court of the first judicial district of said Territory for the county of Mora, in chancery, wherein Gertrude E. Huntington and David L. Huntington, her husband, are complainants, and William H. Moore and William C. Mitchell are defendants, upon the interrogatories and cross-interrogatories annexed to this commission, and, therefore, you are

hereby commanded that you, at certain days and places to be appointed by you for that purpose, do cause the said Henry J. Cuniffe to come before you, and then and there examine him on oath upon the said interrogatories, and that you take such examination, and reduce the
619 same into writing, and return the same, annexed to this writ, closed up, under your seal, into the said district court, addressed to the clerk thereof, with all convenient speed.

Witness the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory and judge of the 1st judicial district court thereof, and the seal of said court, at Santa Fé, New Mexico, this 13th day of June, A. D. 1870.

[SEAL.] W'M BREEDEN, *Clerk.*

Interrogatories to be propounded to Henry J. Cuniffe, of Kit Carson, in the Territory of Colorado, whose answers thereto, when reduced to writing, will be offered as evidence upon the hearing of a certain cause now pending in the district court for the county of Mora, Territory of New Mexico, in chancery, wherein Gertude E. Huntington and David L. Huntington, her husband, are complainants, and William H.
620 Moore and William C. Mitchell are defendants, on the part of the defendants:

Interrogatory 1. What is your name, age, occupation, and where do you reside?

Int. 2. When did you go to reside at El Paso, Texas; how long did you reside there; and what was your occupation during said residence at El Paso, Texas?

Int. 3. Was you acquainted with Nathan Webb; and, if so, when did he commence business at El Paso, Texas; how long did he continue in business; what was his business; and when did he die?

Int. 4. State who constituted the firm of N. Webb & Co., and who managed and conducted the business of said firm from its commencement until the death of Nathan Webb.

621 Int. 5. State your opinion as to the cash value of the goods, wares, and merchandize of the firm of N. Webb & Co., at the date of the death of Nathan Webb.

Int. 6. State who took possession of the business of said firm, sold the goods, and collected the debts due said firm; what was the net proceeds of said firm collected, and to whom was it paid.

Int. 7. Please state if there was charged by you on the books of N. Webb & Co., against Mrs. G. E. Webb, any amounts which should have been charged to N. Webb & Co.

Int. 8. Please state if all the charges on the books of N. Webb & Co., of money, goods, &c., paid to Mrs. G. E. Webb, or her order, are true and correct as entered by you on said books.

Int. 9. Please state the condition of the country at El Paso,
622 Texas, after the death of Nathan Webb, as to the profitable sale for cash of a large stock of goods, wares, and merchandise.

Int. 10. Please state what delay occurred in the winding up the business of the firm of N. Webb & Co., and in what condition the business of said firm was found when so wound up.

Int. 11. State, if you know, what the consideration was, and who paid it, for the purchase of James A. Zabriskie and wife, and A. H. French and wife's interest in the Brazito tract of land.

Int. 12. Did Mrs. G. E. Webb pay anything; and, if so, how much of the consideration of said purchase of said land?

Int. 13. Where is said land situated, and what was its value when purchased?

623 Int. 14. State, if you know, to whom the deed was made, and who paid for lot No. 31, in block 5, in the town of El Paso, Texas, occupied as a residence by Judge Joab Houghton.

Int. 15. Please state for what services was the payment made to W'm P. Bacon, for services to the firm of N. Webb and Co., or for services in the business of N. Webb's estate.

Int. 16. Please state if any of the money received by W'm H. Moore, in December, 1866, at El Paso, belonging to you as partner in the mill adventure; and, if so, how much was paid you.

Int. 17. What was done with the residue of the money, collected by W'm H. Moore, and paid him by you just before his leaving for Fort Union, in December, 1866?

624 Int. 18. Please state what were the habits and custom of Nathan Webb, during his residence at El Paso, Texas, and Fort Bliss, as to drinking and gambling.

Int. 19. Have you any interest in this suit, or are you related to the parties?

Int. 20. If you know anything further, not stated above by you, and material to be stated, please state it.

Cross-interrogatories to be propounded to Henry J. Cuniffe on the part of the complainants in the above-entitled case:

Interrogatory 1. Were you intimately acquainted with the business of N. Webb & Co, and for how long a time, and what was the character and extent of said business?

625 Int. 2. What was the character and qualifications of Nathan Webb as a business man, and in what manner was the business of N. Webb & Co. conducted and managed by him, and what degree of attention and energy did he bestow upon said business, and was the business of N. Webb & Co. successful or otherwise, and to what extent?

Int. 3. How did you arrive at the opinion as to the cash value of the goods of N. Webb & Co., on hand at the date of the death of Nathan Webb, and did you mean the value of the goods at El Paso, or had you reference to the original cost price of them?

Int. 4. With prudence, care, good management and close attention to business; ought not the goods, wares, and merchandize on hand at the time of the death of Nathan Webb, belonging to N. Webb & Co., at Fort Bliss and Franklin, Texas, have produced a fair valuation, especially if, soon after Webb's death, the stock was replenished from Fort Union by goods suited to that market, sent with a view to make the assortment good, and was a fair valuation of the goods, wares,

626 and merchandize on hand at Webb's death, or shortly thereafter?

Int. 5. When Mr. W. H. Moore went to Franklin, after Webb's death, in the year 1866, whom did he put in charge of N. Webb & Co's business; who kept the books, and who was salesman?

Int. 6. What other business was you engaged in at the time you had charge of the business of N. Webb & Co. and what degree of attention and energy was you able to, and did you, bestow upon the same, and for what time was you in charge of said business?

Int. 7. Please state, seperately and distinctly, what amount was realized from the sale of goods of N. Webb & Co. during the time you was in charge of said business, what amount of debts due said firm was collected, and what property, in addition to the mercantile stock, if

627 any, of any character, belonging to N. Webb & Co. was on hand at the time you took charge of the business, and what disposition was made of the same.

Int. 8. What kind of goods, wares, and merchandize were on hand at the death of Nathan Webb, and were they suited to that market?

Int. 9. While in Franklin at the time above referred to, did Mr. W. H. Moore make any entries in the books of N. Webb & Co.?

Int. 10. How long were you in charge of the books and business, and were the books duly posted when you turned them over?

Int. 11. How often and what amounts of money did you turn over to W. H. Moore & Co., realized, received or collected from the business of N. Webb & Co.?

628 Int. 12. At the time W. H. Moore was in Franklin, after Webb's death, did he not receive on vouchers the sum of about $16,000 on a contract of N. Webb & Co. with the Government, or what amount did he receive?

Int. 13. What amount of goods and merchandize was turned over to Robert Crandall to be sold at Tuczon, and were the goods saleable or not?

Int. 14. At the time you ceased your connection with the business of N. Webb & Co., did the books show fully the status of the business, and were they fully posted, or what entries did they lack to complete them?

Int. 15. Were any goods or other property, pertaining to N. Webb & Co., on hand at the time you resigned the charge of the business; and, if so, what amount and to whom did you transfer it?

629 Int. 16. What amount was due N. Webb & Co. on the books when you assumed charge of the business? What was the character of the debtors at that date as to solvency, and was money abundant, and the time favorable for collections at that date or otherwise?

Int. 17. In what manner did you keep the accounts of the business of N. Webb & Co. transacted by you, and if you kept such accounts or books, where are they?

Int. 18. In what condition did you find the books of N. Webb & Co. when you took charge of the business?

Int. 19. State what degree of diligence was exercised in the collection of debts due the firm of N. Webb & Co., what means were adopted, or what course was pursued to secure payment of said debts, and

630 with due exertion could not a large amount of said debts have been collected that were not collected?

Int. 20. What compensation did you receive for your services while in charge of said business, and who else was employed by you, or to assist you in settleing up the said business, and what was paid them?

Int. 21. Was the mill adventure at El Paso, in which you were interested with N. Webb & Co., successful or otherwise, and to what extent?

Int. 22. What parties were interested in the said mill adventure, and what was the interest of each, how was such interest acquired, and how and when was the interest of N. Webb & Co. disposed of, to whom, and for how much, and who received the proceeds?

631 Int. 23. From your knowledge of the business of N. Webb & Co. in all its branches, including merchandizing, mill adventure, Government contracts, and all other operations, was said business successful or otherwise, and to what extent?

Int. 24. From all your acquaintance and conversation with the parties and your knowledge of their business, what was your understanding of the interest of Nathan Webb in the firm of W. H. Moore & Co., and

what was the general understanding in the community on that subject?

Interrogatory 1—Put to Henry J. Cuniffe by J. A. Loward, probate judge of Greenwood County, Colorado Territory, at Kit Carson, this 8th day of July, A. D. 1870, at the counting-room of H. J. Cuniffe & Co. Said witness first being by me duly sworn, upon his oath, answers said interrogatories as follows:

Answer to 1st interrogatory. Henry J. Cuniffe; forty-four years
632 of age; forwarding and commission merchant, and I reside at Kit Carson, Colorado Territory.

Answer to 2nd interrogatory. I went to El Paso, Texas, in the year 1859; I was first merchandizing, and then milling; I left there the 30th day of June, 1869.

Answer to 3rd interrogatory. I was acquainted with Nathan Webb; he commenced business there in 1863, and continued in business there until he died; he died in October, 1866; he was merchandizing and interested in the milling business.

Answer to 4th interrogatory. N. Webb, W H. Moore, William C. Mitchell constituted the firm of N. Webb & Co. The business was conducted by N. Webb from the commencement to his death.

Answer to 5th interrogatory. I think at the time of his death, at a rough estimate, that the goods were worth seventy-five or eighty thousand dollars; but I had no facilities for knowing their value more than any other customer frequenting the store.

633 Answer to 6th interrogatory. Judge J. Houghton had charge of the business for about two months or less, after the death of said Webb. Judge Houghton turned the goods over to W. H. Moore; William H. Moore turned goods over to H. J. Cuniffe, having first invoiced and then sent them to Franklin, Texas, from Fort Bliss. The amount of said goods, at State cost without freight, cost sixty-five thousand one hundred and thirteen dollars and ninety-eight cents. By instruction of W. H. Moore, I turned over to Captain Crandall twenty-seven thousand seven hundred and sixty-seven dollars and ten cents, and then I turned over to W. H. Moore & Co., in cash, and Mrs. Webb's receipts for cash and merchandize, thirty-six thousand six hundred and eighty-one dollars and sixty-eight cents, and in outstanding debts and Brazito trade, thirteen thousand two hundred and fifteen dollars eighty-six cents. This money remitted at various times to W. H. Moore
634 & Co., Fort Union, N. M., to be credited to N. Webb & Co. After the death of N. Webb, I received an invoice of goods of W. H. Moore & Co., Fort Union, N. M., for the sum of thirteen thousand seven hundred and ninety-two dollars and sixty-six cents. They were staple goods to assist in the sale of the unsaleable goods of N. Webb & Co. turned over to me.

Answer to interrogatory 7th. There was nothing charged on the book of N. Webb & Co., against Mrs. G. E. Webb, which should have been charged to N. Webb & Co.

Answer to 8th interrogatory. Any charges of or goods paid Mrs. G. E. Webb, or her order, during my management of the business, are correct and were made at her request.

Answer to 9th interrogatory. At the death of Nathan Webb, a large stock of goods could not have been sold for cash at Franklin or El Paso, Texas, or in that section of the country. At the time I was in charge of the goods I could get but two offers for said goods: Messrs. Schutz
635 & Bro. offered to take ten or fifteen thousand dollars' worth of the

goods, on selection, at States costs; this was after I received a fresh supply from Fort Union, N. M., and the offer of Messrs. Schutz Bro. was on twelve months' time. Before I could get an answer from Fort Union Messrs. Schutz & Bro. declined to make the trade; Messrs. H. Lesinsky & Co., Los Cruces, N. M., offered me twenty-five per cent. less than States cost, on one year's time, for the whole amount of said goods; at that time W. H. Moore & Co. declined to take it, as they thought it wastoo low for the goods, but afterwards, at my suggestion, W. H. Moore &Co. agreed to take the amount, but without credit, and Messrs. H. Lesinsky & Co. declined to take the goods.

Answer to interrogatory 10th. I held the goods in my possession about twenty months. During that time I sold and disposed of all the goods I could, and after that the goods *was* turned over to Captain Crandall on W. H. Moore & Co.'s order. Business was dull, and the delay was caused by inability to sell the goods. I do not know what the
636 condition of the business was when would up; the books of N. Webb & Co. ought to show.

Answer to interrogatory 11th. The consideration for the purchase of James A. Zabriskie & wife, and A. H. French & wife's interest in the Brazito tract of land, situated in Doñ*ana* County, N. M., was their indebtedness to N. Webb & Co. on the books of N. Webb & Co.

Answer to interrogatory 12th. Mrs. G. E. Webb paid nothing of the consideration of the purchase of said interests in said land.

Answer to interrogatory 13th. It was situated in Doñ*ana* County, N. M., and was worth, at that time, about three thousand dollars; the interest of the remaining heirs could have been purchased at that time for fifteen hundred dollars each.

Answer to interrogatory 14th. I do not remember who paid for lot No. 31, in block 5, in the town of El Paso, Texas, occupied as a residence by Judge Joab Houghton.

637 Answer to interrogatory 15th. The payment made to W. P. Bacon was made for service rendered the estate of N. Webb deceased.

Answer to interrogatory 16th. Half of the money earned by the mill belonged to me, and was paid to me, and the residue belonged to N. Webb & Co., and the books of N. Webb & Co. ought to show the amount correctly.

Answer to interrogatory 17th. After deducting what was due me on mill adventure, the residue of the money received by W. H. Moore was credited on the books of N. Webb & Co., and taken by him to Fort Union, N. M., in December, 1866.

Answer to interrogatory 18th. I prefer not to answer in regard to N. Webb's habits.

Answer to interrogatory 19th. I have no interest in the suit, nor am I in any way related to the parties.

Answer to interrogatory 20th. I know nothing further material to be stated, not already stated by me.

Answer to cross-interrogatories.

638 Answer to cross-interrogatory 1st. I was intimately acquainted with the mill adventure, but nothing further.

Answer to cross-interrogatory 2nd. N. Webb was considered a good business man, but in my judgment the El Paso business might have been managed more closely; the general appearance induced the belief that the establishment was run expensively. The mill business was

profitable, as the books of N. Webb & Co. will show. Whether the other business of N. Webb & Co. was profitable or otherwise I do not know and cannot state.

Answer to cross-interrogatory 3rd. I formed my opinion of the cost-value of goods of N. Webb & Co. at Fort Bliss, at the death of N. Webb, from casual observation, without having made any inventory or estimate of their value.

Answer to cross-interrogatory 4th. I have already testified that I done the best I could with the goods turned over to me by W. H. Moore
639 & Co., and have stated what I received for them, and to whom I turned over the remainder *to;* and from the condition of the country and the depressed state of business after the death of N. Webb, I do not think any one could have made any more out of the goods than was made by me. It was eight or ten months after the death of N. Webb, before the stock of goods was replenished with staple articles from Fort Union, N. M.; at the death N. Webb I do not know what was a fair valuation of goods, wares, and merchandize on hand; I do know that they were inventoried by W. H. Moore & Co. to me at much more than their actual value in the market at that time, and they continued to depreciate in value from that date until I left the country.

Answer to cross-interrogatory 5th. W. H. Moore, when he left Franklin, Texas, in 1866, turned over per invoice to me, as I have already stated. The books *was* kept by Henry Swinker, and I had various salesmen at different times during the two years, to wit, Albert Juch, Hyacanth, Henry Cuniff, E. Stein, Mortiner Lujan, and per-
640 haps occasionally others that I do not remember.

Answer to cross-interrogatory 6th. I was engaged in no other business except the mill adventure, at the time I took charge of N. Webb & Co.'s business. I gave it as close and strict attention as if it was my own business, and more, for the period of about twenty months.

Answer to cross-interrogatory 7th. I have already stated distinctly the amount received from the sale of goods from N. Webb & Co., and to whom I turned over the remainder *to.* I do not know the amount of debts collected, due said firm of N. Webb & Co., but the books of N. Webb & Co. will show. There was some property, in addition to the mercantile stock, which consisted of half interest in the mill machinery, flour, wheat on hand, wood, &c., which was purchased by me of W. H. Moore & Co., on the 30th day of April, 1869, and for which I paid the firm of W. H. Moore & Co. the sum of two thousand dollars. I offered to take three thousand dollars for my interest, or give two thousand dollars for their interest, and let me wind the business
641 up, and they took the two thousand dollars, which I paid them, which was all I felt justified in offering for their interest and winding up the business.

Answer to cross-interrogatory 8th. The goods on hand at the death of N. Webb apparently looked well, but many of them were unsuited to that market.

Answer to cross-interrogatory 9th. When W. H. Moore was at Franklin, the goods were at Fort Bliss, until sent up to me after being invoiced. I presume any sales or receipts of funds were entered or caused entered on the books of N. Webb & Co. by W. H. Moore.

Answer to cross-interrogatory 10th. I had charge of the books of N. Webb & Co. something less than two years. The books were in good order and correct when I turned them over. The money and goods

paid to Mrs. G. E. Webb I took her receipts for, and they were allowed to me as cash on my settlement with W. H. Moore & Co.

642 Answer to cross-interrogatory 11th. I sent remittances at various times, and the total amount I have already stated, realized, received, or collected from the business of N. Webb & Co.

Answer to cross-interrogatory 12th. A portion of the sum received by W. H. Moore was paid to me on mill adventure, and the residue, I do not remember how much, was credited on the books of N. Webb & Co., and taken by W. H. Moore to Fort Union, N. M.

Answer to interrogatory 13th. The amount turned over to Captain Crandall was twenty-seven thousand seven hundred and sixty-five dollars and ten cents. It was an indifferent lot, and not saleable.

Answer to interrogatory 14th. At the time I closed business with N. Webb & Co., I made a final settlement with W. H. Moore & Co., which was entered on the books of W. H. Moore & Co., and I presume the proper entries were made on the books of N. Webb & Co. to show said settlement.

643 Answer to cross-interrogatory 15th. The goods invoiced to me by W. H. Moore & Co., belonging to N. Webb & Co., were fully accounted for by me to W. H. Moore & Co. at the time I resigned the charge of said business. The half interest of N. Webb & Co. in the mill adventure was purchased and paid for by me as above stated, and the unpaid note, mortgages, and accounts due N. Webb & Co. were turned over to Galerd Clark, attorney, for collection, by direction of W. H. Moore & Co., for which they have Mr. Clark's receipts.

Answer to cross-interrogatory 16th. I do not know what amount was due on the books of N. Webb & Co. at the time I took charge of the business. I do know that almost all the debts were worthless and could not be collected. Money was scarce and the time unfavorable for the collection of debts, and I would not have given five thousand dollars for the entire amounts of the books of N. Webb & Co., amounting to thirty-five or forty thousand dollars, and one year after I did not consider them worth five hundred dollars.

644 Answer to cross-interrogatory 17th. I kept strict and correct account of the business of N. Webb & Co., turned over to me by W. H. Moore & Co., and settled with them accordingly, and such of said accounts as considered worth preserving were turned over to W. H. Moore & Co., The amount collected from amounts due on the books of N. Webb & Co. were credited to persons paying said amounts, and remitted to W. H. Moore & Co., as their book will show.

Answer to cross-interrogatory 18th. I found the books of N. Webb & Co., when I took charge of them, clear and correct, and they were in that condition when turned over to W. H. Moore & Co.

Answer to cross-interrogatory 19th. During the time the business was in my hands I used all possible diligence to collect the debts due the firm of N. Webb & Co., and I do not believe any more could have been collected than was collected by me, by any person or any means.

645 Answer to cross-interrogatory 20th. I have already stated who was employed by me. I received six thousand eight hundred and twenty dollars and ten cents for all my services in said business. The clerks were paid the usual compensation for such services, but the exact amount paid to each I do not now remember.

Answer to cross-interrogatory 21st. The mill business was successfull, and the books of N. Webb & Co. will show to what extent. The amount net profit of mill adventure I do not now remember.

Answer to cross-interrogatory 22nd. The parties interested in the mill adventure, W. H. Moore, W. C. Mitchell, and Nathan Webb, owners of half interest, and myself owner of the other half interest; the half interest of N. Webb was acquired at my request, and sold by one Juan Yurivon, and the proceeds of the interest *was* paid over to N. Webb & Co. during the life-time of N. Webb, and to W. H. Moore & Co. since his death, and I presume the books of N. Webb & Co. will show the true amount received.

Answer to cross-interrogatory 23rd. I know the mill business
646 was successful. I know nothing about the other business of N. Webb & Co., and cannot state whether successful or not,

Answer to cross interrogatory 24th. I know nothing about what the understanding in the community was as to the interest of Nathan Webb. One of the parties, W. H. Moore, stated to me that Nathan Webb had a third interest in all the business south of the Jornada, and about one-eighth interest in the business of W. H. Moore & Co., at Fort Union, N. M. Neither Nathan Webb or W. C. Mitchell ever said anything to me about what was the interest of Nathan Webb in the business of W. H. Moore & Co. and N. Webb & Co.

HENRY J. CUNIFFE.

TERRITORY OF COLORADO,
County of Greenwood:

I, J. A. Loward, probate judge of the county of Greenwood, in the Territory of Colorado, do hereby certify that in pursuance of the enclosed mandamus, I caused the said Henry J. Cuniffe to appear
647 before me at the counting-house of the said Henry J. Cuniffe & Co., at Kit Carson, in said county and Territory, and after said witness was duly sworn by me on the 8th day of July, 1870, between the hours of 12 o'clock m. and seven o'clock p. m. on said day, I put the enclosed interrogatories, from No. 1 to 20, and cross-interrogatories, from No. 1 to 24, to said witness Henry J. Cuniffe, and the answers to said interrogatories were written down by me as set forth in the enclosed seven sheets of paper, and said answers were carefully read and corrected by said witness, and then pronounced correct by said witness, and then signed by said witness in my presence.

Witness my hand and private seal of the probate court of Greenwood County, Colorado Territory, this 8th day of July, 1870, (there no seal having been furnished this county yet.)

[SEAL.] J. A. LOWARD,
Probate Judge.

On which said papers is the following endorsement, to wit:

648 G. E. Huntington & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Depositions. Filed in my office this 16th day of July, 1870. W'm Breeden.

The Territory of New Mexico to James S. Garland, a notary public of the city and county of St. Louis, Missouri, greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed, and by these presents your are invested with full power and authority to examine Robert Campbell, of said city, county, and State, on his corporal oath, as a witness in a certain cause pending in the district court of the first judicial district of said Territory, for the county of Mora, in chancery, wherein Gertrude E. Huntington and

David L. Huntington, her husband, are complainants, and Will-
649 iam H. Moore and William C. Mitchell are defendants, upon the interrogatories and cross-interrogatories annexed to this commission, and therefore you are hereby commanded that you, at certain days and places, to be appointed by you for that purpose, do cause the said Robert Campbell to come before you, and then and there examine him on oath upon the said interrogatories, and that you take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into the said district court, addressed to the clerk thereof, with all convenient speed.

Witness the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory, and judge of the 1st judicial district court thereof, and the seal of said court, at Santa Fé, New Mexico, this 13th day of June, A. D. 1870.

[SEAL.] W'M BREEDEN, *Clerk.*

650 Interrogatories to be propounded to Robert Campbell, of the city of St. Louis, Missouri, whose answers thereto, when reduced to writing, will be offered as evidence upon the hearing of a certain cause now pending in the district court for the county of Mora, Territory of New Mexico, in chancery, wherein Gertrude E. Huntington and David L. Huntington, her husband, are complainants, and William H. Moore and William C. Mitchell *and* defendants, on the part of the defendants

Interrogatory 1. What is your name, age, occupation, and where do you reside?

Int. 2. What is the style of the firm to which you belong, and where is your place of business, and who composes the firm?

Int. 3. Are you acquainted with the firm of W'm H. Moore & Co.,
651 of Fort Union, New Mexico; and if so, who composes said firm?

Int. 4. State when said firm of W'm H. Moore & Co. commenced business with your house, and how long they have conti'ued to do business through and with your house.

Int. 5. Please state if all their purchases were made with or through your house, and if remittances were made to your house to pay for their purchases.

Int. 6. Please examine your books, and state what was the condition of the account of W'm H. Moore & Co. with Robert Campbell & Co. for the years 1861, 1862, 1863, 1864, 1865, and 1866.

Int. 7. Was there in the hands of Robert Campbell & Co., at any time during said years, funds of W'm H. Moore & Co. in excess of the ordinary wants and demands of the business of W'm H. Moore & Co.?

652 Int. 8. Do the books of Robert Campbell & Co. show correctly all purchases made of or through Robert Campbell & Co. by W'm H. Moore & Co., and all cash remitted in payment thereof?

Int. 9. Were regular and correct accounts of all cash received of W'm H. Moore & Co., and the disposition made of it by Robert Campbell & Co., regularly and correctly made to W'm H. Moore & Co., of Fort Union, New Mexico?

Int. 10. Were goods, wares, and merchandize purchased of and through Robert Campbell & Co. for the branch house of N. Webb & Co., at Franklin and Fort Bliss, Texas; and if so, upon whose credit were said goods purchased, and by whom was payment made for said goods of N. Webb & Co.?

653 Int. 11. Please state what amount of money and goods was furnished Nathan Webb, and by whom payment was made for the same.

Int. 12. Have you any interest in this suit, or are you related to the parties?

Int. 13. If you know anything further material to be stated in this case, which has not already been stated by you, please state it.

Cross-interrogatories to be propounded to Robert Campbell on the part of the complainants in the above-entitled cause.

Interrogatory 1. What amount of funds of W. H. Moore & Co. were in your possession or under your control on the 15th day of October, 1866, and what amount of debts due at that date by W. H. Moore & Co. were afterwards paid by or through you?

654 Int. 2. What was the total indebtedness of W. H. Moore & Co. on the 15th day of October, 1866, for goods purchased in the States, so far as known to you?

Int. 3. Did you keep a seperate account with N. Webb & Co., or were all goods purchased in the name of W. H. Moore & Co., and did you know what goods were for W. H. Moore & Co., and what for N. Webb & Co.; and if so, how did you know? And if such seperate account was kept, please state to what extent, and accompany the answer to this interrogatory with a copy of the account as taken from your books in items.

Int. 4. Were any goods purchased for N. Webb & Co. shipped direct, addressed to N. Webb & Co., El Paso, or Franklin, Texas, to your knowledge? And if so, state the amount of goods so shipped, and date of last shipment.

655 Int. 5. What amount of funds belonged to W. H. Moore & Co. was in your hands, or under your control, or in transitu to you from W. H. Moore & Co. on the 2nd day of July, 1866, and what was the amount of W. H. Moore & Co.'s liabilities in the States for goods purchased, at that date, as far as known to you?

Int. 6. What amount was paid to you after July 2, 1866, for goods purchased by W. H. Moore & Co. prior to that date?

Int. 7. What amount of funds belonged to W. H. Moore & Co. was in your hands, or under your control, or in transitu to you, from W. H. Moore & Co., on the 1st day of July, 1867, and what was the amount of W. H. Moore & Co.'s liabilities in the States, for goods purchased at that date, as far as known to you, and also on January 22, 1869?

656 Int. 8. What amount was paid by you after July 1, 1867, for goods purchased by W. H. Moore & Co. prior to that date, and also what was paid by you after January 22, 1869, for goods purchased by W. H. Moore & Co. prior to this latter date?

Int. 9. Were any payments made by you on account of N. Webb & Co., or for goods purchased especially for them, and if so, what amount, and when was the last of such payments made, and when was the last purchase of goods for N. Webb & Co. made?

Int. 10. What was the exact state of the accounts of W. H. Moore & Co. with your house on the 2nd of July, 1866; on the 15th of October, 1866; on the 1st of May, 1867; on the 1st of July, 1867, and on the 22nd January, 1869.

Please answer fully as to each date, and what was the amount of liabilities of W. H. Moore & Co. for goods purchased at each of these dates, so far as known to you.

657 Int. 11. When and what was the largest amount ever appearing on your books, at any one date, to the credit of W. H. Moore & Co.?

Int. 12. Were all of W. H. Moore & Co.'s purchases and payments made through your house, or did they purchase elsewhere in the city of St. Louis, and did they not purchase in the eastern cities from the year 1861 to October, 1866?

Int. 13. Did W. H. Moore & Co., at any time since the year 1861, have deposited with you to their credit any sum or amount of gold or silver, large or small? If so, state the amount and when.

Int. 14. Did W. H. Moore or W. C. Mitchell, or either of them, between the year 1861 and 1866, have any money to their credit, or either of them, in gold or silver, or currency? If so, state the amounts as taken from your books.

658 Int. 15. Do you know of your own knowledge, or otherwise, whether W. H. Moore & Co., or W. H. Moore, or W. C. Mitchell, or either of them, or the firm, from the year 1861 to the fall of the year 1866, had any money deposited in the city of St. Louis, or elsewhere in the States, with any bank or firm other than your own? If so, state the amount, when and where.

Int. 16. From your acquaintance with the parties and their transactions and business, what did you understand to be the position and interest of Nathan Webb in the firm' of W. H. Moore & Co. and N. Webb & Co.? And if you had any positive information or knowledge on that point, please state it, and how you acquired such information, and when

"EXHIBIT A."

N. Webb & Co., Dr.

1865.			
April 3.	To m'd'se		12,942 55
Dec'r 29.	" interest on bill, Ap'l 3, '65		967 08
659			
1866.			
April 14.	To m'd'se		11,395 72
July 21.	" interest in settlement of bill, Ap'l 3, '65		357 54
1867.			
Jan'y 25.	" int. @ 10 % in settlement of note given for bill, Ap'l 14, '66		806 16
			26,469 05

CR.

1865.			
Dec'r 29.	By cash from W. H. Moore & Co		7,441 24
1866.			
July 21.	" " " " " "		6,825 93
Nov. 28.	" " " " " "		4,000 00
Dec. 17.	" " " " " "		3,000 00
1867.			
Jan'y 25.	" " " " " "		5,201 88
			26,469 05

"EXHIBIT B."

July 2, 1866.	Cash on hand	18,367 67	
	" in transit	8,904 32	
			27,271 99
	Due R. C. & Co. for m'd'se		15,908 15
Oct. 15, 1866.	Cash in transit	36,000 00	
	Due R. C. & Co. for cash paid	4,247 56	
			31,752 44
	Due R. C. & Co. for m'd'se		5,650 78
May 1, 1867.	Cash on hand		7,750 17
	Due R. C. & Co. for m'd'se		7,279 95
July 1, 1867.	Cash in transit	6,329 17	
	" on hand	5,196 78	
			11,525 95
	Due R. C. & Co. for m'd'se		7,279 95
Jan'y 22, 1869.	Cash on hand		639 95
660	Due R. C. & Co. for m'd'se		9,482 69

Liabilities July 2, '66		88,655 42
Oct'r 15, '66		97,519 52
May 1, '67		87,087 95
July 1, '67		78,912 27
Jan. 22, '69		45,198 88

Deposition of Robert Campbell, of the city and county of St. Louis, and State of Missouri, produced, sworn, and examined before me, James S. Garland, a notary public in and for said county and State, in obedience to the annexed commission, to be read in evidence in a certain cause now pending in the district court of the first judicial district of the Territory of New Mexico, for the county of Mora, in chancery, wherein Gertrude E. Huntington and David L. Huntington, her husbands, are complainants, and William H. Moore and William C. Mitchell are defendants, on the part of the defendants.

ROBERT CAMPBELL, of lawful age, being duly sworn, cautioned,
661 and examined, in answer to the several interrogatories & cross-interrogatories, says:

Interrogatory 1. What is your name, age, occupation, and where do you reside?

Answer to interrogatory No. 1. My name is Robert Campbell; I am sixty-six years of age; I reside in St. Louis, Missouri; am a retired merchant.

Interrogatory 2. What is the style of the firm to which you belong, and where is your place of business, and who composes the firm?

Answer to interrogatory 2. The style of the firm is Robert Campbell & Co.; the number of the building which is my place of business is 422 North Main street, in the city of St. Louis, Mo.; Robert Campbell and Hugh Campbell compose the firm.

Interrogatory 3. Are you acquainted with the firm of W'm H. Moore & Co., of Fort Union, New Mexico; and if so, who compose said firm?

Answer to interrogatory 3. I am acquainted with that firm. It
662 is composed of W'm H. Moore and W'm C. Mitchell.

Interrogatory 4. State when said firm of W'm H. Moore & Co. commenced business with your house, and how long they have continued to do business through and with your house.

Answer to interrogatory 4. The firm was previously Moore & Reese, and the first entry in the name of W'm H. Moore & Co. I find upon our books is dated May 14th, 1862, and they have continued to do business with us up to the present time.

Interrogatory 5. Please state if all their purchases were made with or through your house, and if remittances were ever made to your house to pay for their purchases.

Answer to interrogatory 5. The purchases were not all made through our house. Mr. Mitchell generally made the purchases in person, but the remittances were all made through our house.

Interrogatory 6. Please examine your books and state what was
663 the condition of the account of W'm H. Moore & Co. with Robert Campbell & Co. for the years 1861, 1862, 1863, 1864, 1865, & 1866.

Answer to interrogatory 6. In 1861, W'm H. Moore & Co. had no account with us. Their account began with us in 1862. During the years 1862, 1863, 1864, 1865, & 1866, W'm H. Moore & Co. were constantly indebted to us, and paid large sums of interest to us for debts past due.

Interrogatory 7. Was there in the hands of Robert Campbell & Co., at any time during said years, funds of W'm H. Moore & Co. in excess of the ordinary wants and demands of the business of W'm H. Moore & Co.?

Answer to interrogatory 7. No.

Interrogatory 8. Do the books of Robert Campbell & Co. show correctly all purchases made of or through Robert Campbell & Co., by W'm H. Moore & Co., and all cash remitted in payment thereof?

Answer to interrogatory 8. Yes.

664 Interrogatory 9. Were regular and correct accounts of all cash received of W'm H. Moore & Co., and the disposition made of it by Robert Campbell & Co., regularly and correctly made to W'm H. Moore & Co., of Fort Union, New Mexico?

Answer to interrogatory 9. Yes.

Interrogatory 10. Were goods, wares, and merchandize purchased of and through Robert Campbell & Co. for the branch house of N. Webb & Co., at Franklin, and Fort Bliss, Texas; and if so, upon whose credit were said goods purchased, and by whom, for said goods of N. Webb & Co.?

Answer to interrogatory 10. Goods were so purchased on the credit of W'm H. Moore & Co., and payments for such purchases were also made through W'm H. Moore & Co.

Interrogatory 11. Please state what amount of money and goods was furnished Nathan Webb, and by whom payment was made for same.

Answer to interrogatory 11. I cannot tell the exact amount
665 furnished; only two bills of merchandise were charged direct to N. Webb & Co., due on April 3, 1865, of $12,942.55, and the other on April 4, 1866, of $11,395.72, in all $24,338.27. W. H. Moore & Co. paid for these goods. Several bills of goods were purchased of other houses in St. Louis at these dates, and paid by W. H. Moore & Co.

Interrogatory 12. Have you any interest in this suit, or are you related to the parties?

Answer to interrogatory 12. No.

Interrogatory 13. If you know anything further, material to be stated in this cause, which has not already been stated by you, please state it.

Answer to interrogatory 13. I know nothing more.

Cross-interrogatories:

Cross-interrogatory 1. What amount of funds of W. H. Moore & Co. were in your possession or under your control on the 15th day of
666 October, 1866, and what amount of debts, due at that date by W'm H. Moore & Co., were afterwards paid by or through you?

Answer to cross-interrogatory 1. We had no funds of W'm H. Moore & Co. on that date; their cash account was overdrawn $4,247.50 on that date; there were debts for merchandize against them, on that date, amounting to $42,889.54, afterwards paid by them.

Cross-interrogatory 2. What was the total indebtedness of W'm H. Moore & Co., on the 15th day of October, 1866, for goods purchased in the States, so far as known to you?

Answer to cross-interrogatory 2. Their total indebtedness for goods purchased, due, and not due upon October 15th, 1866, was $97,519.52.

Cross-interrogatory 3. Did you keep a seperate account with N. Webb & Co., or were all goods purchased in the name of W'm H. Moore & Co., and did you know what goods were for W'm H. Moore & Co.,
667 and what for N. Webb & Co.? And if so, how did you know? And if such seperate account was kept, please state to what extent, and accompany the answer to this interrogatory with a copy of the account, as taken from your book, in items.

Answer to cross-interrogatory 3. A seperate account was kept with N. Webb & Co. for a short time, a copy of which, taken from our books, I will attach, marked Exhibit A. We did not always know what goods were for N. Webb & Co.

Cross-interrogatory 4. Were any goods purchased for N. Webb & Co., shipped direct, addressed to N. Webb & Co., El Paso or Franklin, Texas, to your knowledge? And if so, state the amount of goods so shipped and the date of last shipment.

Answer to cross-interrogatory 4. Yes; goods were so shipped, and to the amount of $48,960. The last shipment was on April 21, 1866.

Cross-interrogatory 5. What amount of funds belonged to W. H. Moore & Co. was in your hands, or under your control, or in trans-
668 itu to you from W. H. Moore & Co., on the 2nd day of July, 1866, and what was the amount of W. H. Moore & Co.'s liabilities in the States for goods purchased at that date, as far as you know?

Answer to cross-interrogatory 5. On July 2, 1866, on hand and in transitu, $27,271.99. Their total indebtedness for goods, on the said date, was $88,655.42.

Cross-interrogatory 6. What amount was paid to you after July 2d, 1866, for goods purchased by W. H. Moore & Co. prior to that date?

Answer to cross-interrogatory 6. $61,383.43.

Cross-interrogatory 7. What amount of funds belonging to W. H. Moore & Co. was in your hands, or under your control, or in transitu to you from W. H. Moore & Co., on the 1st day of July, 1867, and what was the amount of W. H. Moore & Co.'s liabilities at that date, as far as you know, and also on January 22d, 1869?

Answer to cross-interrogatory 7. The amount on July 1,
669 1867, was $11,525.95. The amount of their indebtedness in the

States, on July 1, 1867, was $78,912.27, and on January 22, 1869, it was $45,198.88.

Cross-interrogatory 8. What amount was paid by you after July 1, 1867, for goods purchased by W. H. Moore & Co. prior to that date; and, also, what was paid by you after January 22d, 1869, for goods purchased by W. H. Moore & Co. prior to this latter date?

Answer to cross-interrogatory 8. The amount paid by us for goods purchased by W. H. Moore & Co., prior to July 1, 1867, was $78,912.27: the amount so paid for goods purchased prior to January 22, 1869, after January 22, 1869, was $27,475.33.

Cross-interrogatory 9. Were any payments made by you on account of N. Webb & Co., or for goods purchased especially for them; and if so, what amount, and when was the last of such payments made, and when was the last purchase of goods for N. Webb & Co. made?

670 Answer to cross-interrogatory 9. The amount of payments for and on account of N. Webb & Co. was $48,960.08. The last payment was on January 25th, 1867. The last purchase was made in April, 1866.

Cross-interrogatory 10. What was the exact state of the accounts of W. H. Moore & Co. with your house on the 2nd day of July, 1866, on the 15th October, 1866, on the 1st of May, 1867, on the 1st of July, 1867, and on the 22nd day of Jan'y, 1869? Please answer fully as to each date; and what was the amount of liabilities of W. H. Moore & Co. for goods purchased at each of these dates so far as known to you?

Answer to cross-interrogatory 10. The state of their account, at the several times mentioned in this interrogatory, is shown by paper marked Exhibit B, hereto attached by me, and made a part of my deposition.

Cross-interrogatory 11. When and what was the largest amount ever appearing on your books, at any one date, to the credit of W. H. Moore & Co.?

671 Answer to interrogatory 11. They never had a credit, that is a balance to their credit, on our books; they were always indebted to us.

Cross-interrogatory 12. Were all of W. H. Moore & Co.'s purchases and payments made through your house, or did they purchase elsewhere in the city of St. Louis, and did they not purchase in eastern cities from the year 1861 to October, 1866?

Answer to cross interrogatory 12. Not all their purchases were made through us, either in St. Louis or elsewhere, but all their payments were made through us, as far as I know. They purchased East during that period.

Cross-interrogatory 13. Did W. H. Moore & Co. at any time since the year 1861 have deposited with you to their credit any sum or amount of gold or silver, large or small? If so, state the amount, and when.

Answer to cross-interrogatory 13. Our books show nothing of the kind, and I have no recollection or knowledge of any.

672 Cross-interrogatory 14. Did W. H. Moore or W. C. Mitchell, or either of them, between the year 1861 and 1866 have any money to their credit, or either of them, in gold, or silver, or currency? If so, state the amount as taken from your books.

Answer to cross-interrogatory 14. Our books show nothing to the credit of either, at that time, during that period.

Cross-interrogatory 15. Do you know of your own knowledge, or otherwise, whether W. H. Moore & Co., or W. H. Moore, or W. C. Mitchell,

or either of them, or the firm, from the year 1861 to the fall of the year 1866, had any money deposited in the city of St. Louis, or elsewhere in the States, with any bank or firm, other than your own? If so, state the amount, when and where.

Answer to cross-interrogatory 15. I have no knowledge of any such thing.

Cross-interrogatory 16. From your acquaintance with the parties and their transactions and business, what did you understand to be the position and interest of Nathan Webb in the firm of W. H. Moore
673 & Co., and N. Webb & Co.? And if you had any positive information or knowledge on that point, please state it, and how you acquired such information, and when.

Answer to cross-interrogatory 16. I have heard some conversations in respect to his relations to those firms, but have now no distinct recollection of what I heard.

ROBERT CAMPBELL.

STATE OF MISSOURI,
County of St. Louis:

I, James S. Garland, a notary public in and for the county of St. Louis, and State of Missouri, do hereby certify that, in obedience to the annexed commission, I caused the therein-named Robert Campbell to come before me on the twenty-first day of July, A. D. 1870, at the office of Robert Campbell & Co., No. 422 North Main street, in the city of St. Louis, county of St. Louis, and State of Missouri, and having first administered to him a solemn oath that he testify the truth, the whole truth, and nothing but the truth, of his knowledge touching the
674 matter in controversy in the said cause, did then and there examine him on oath upon the annexed interrogatories, and cross-interrogatories, and that his examination was reduced to writing by me, and signed by the deponent in my presence, and the same is by me into the said court, together with the said commission and interrogatories, and cross-interrogatories.

In testimony whereof witness my hand and notarial seal hereto set, this 22nd day of July, 1870.

[SEAL.]

JAMES S. GARLAND,
Notary Public, St. Louis County, Mo.

On which said papers is the following endorsement, to wit:

In the U. S. district court for the Territory of New Mexico. Gertrude Huntington et als. vs. W. H. Moore, et als. Deposition of Rob't Campbell of St. Louis, Mo., taken by James S. Garland, notary public. Notarial fees, $15.00, paid by def't. Filed in my office this 30th day of July, 1870. W'm Breeden, clerk.

675 UNITED STATES OF AMERICA,
Territory of New Mexico:

First judicial district court. In chancery.

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
W'M H. MOORE, W'M C. MITCHELL. } Chancery.

Depositions taken before W'm Breeden, master and commissioner in chancery, to be used in evidence upon the part of the complainants in said cause. Said depositions were taken at the office of said master, at Santa Fé, New Mexico, on the 1st day of August, A. D. 1870, and were taken, by agreement of the solicitors of the parties, without notice.

JOAB HOUGHTON being first duly sworn, upon his oath says:

Questions by S. B. Elkins, esq., solicitor for complainants:

Interrogatory 1. For how long a time did you reside in El Paso, Texas, after the death of Nathan Webb?

676 Answer. I was in El Paso most of the time from the day after the death of N. Webb, October 16, 1866, to December, 1867.

Int. 2. During that time did you notice the state of business generally in that part of the country, and particularly the business placed in the hands of Henry J. Cuniffe, to wit, the selling of the goods, wares, and merchandize of the late firm of N. Webb & Co., and the realization of the assets of said firm by the collection of debts?

Ans. I observed closely the state of business in that part of the country, not only during the time mentioned, but during the preceeding year of 1865, when a' La Mesilla, New Mexico, and occasionally at El Paso, Texas. During the years 1865, '66, & '67, business, generally, was more than usually successful, and the collection of money for indebtedness not difficult to make by the use of ordinary diligence. In the sale and disposition of the goods and effects of the late firm of N. Webb & Co., and in the management of the mill business, Mr. Cuniffe appeared to use ordinary diligence, and was to a fair extent

677 successful, but in the collection of the debts due the late firm, it appeared to me, as well as to others, but little, or in fact, no proper diligence was used, and little or no success obtained in consequence.

Int. 3. State your opinion as to the value and availability of the debts due the firm of N. Webb & Co. at the time of the death of N. Webb.

Ans. There *was* many bad debts, but, in my opinion, had ordinary diligence been used during the six months subsequent to the death of N. Webb, from 50 to 75 per cent. of the whole indebtedness could have been either realized or secured.

Int. 4. State what was the diligence used to collect these debts.

Ans. A list of the debts was made out from the books, and at the request of W. H. Moore, as I was informed, Mrs. G. E. Webb, adm'x, wrote to each debtor advising him of his indebtedness and requesting payment; there were very few responses to these letters. Mr. Cuniffe posted a similar list in his store, at Franklin, with notice to debtors to pay up. This is the extent of all diligence used to collect these

678 debts within my knowledge at El Paso, Texas, during the time mentioned. I understood, both from Mr. Cuniffe and Moore, that he, Moore, was opposed to there being any of the usual legal steps taken to recover or secure these debts. To my knowledge none of the usual remedies of law were resorted to, in a single instance, to either enforce or to secure the payment of these debts, and debtors used their own pleasure about paying or not.

Int. 5. To your knowledge, *does* there stand charged against Mrs. G. E. Webb, personally, on the books of N. Webb & Co. as continued by Henry J. Cuniffe, subsequent to death of N. Webb, amounts of money,

goods, or paid accounts, which should have been charged to N. Webb & Co., or to the estate of N. Webb, deceased?

Ans. There are items charged in the books of N. Webb & Co., & continued by H. J. Cuniffe against Mrs. G. E. Webb, personally, which should have been charged to either the firm of N. Webb & Co. or the estate of N. Webb, deceased. The items are found in certain
679 accounts of H. J. Cuniffe with Mrs. G. E. Webb. These accounts Mrs. G. E. Webb receipted to H. J. Cuniffe, who, in his settlement with W. H. Moore & Co., was credited with the whole amount as cash, from the assets of N. Webb & Co., and Mrs. Webb charged personally with the whole amount. In giving my evidence before in this case, I filed some of these accounts containing the items referred to, and also a statement of the items, which amounts (so far as that statement goes) to $6,369.65. The items composing that amount appear in the statements referred to.

Int. 6. Do you know the property known as the Brazito and Fort Fillmore tract of land; and, if so, what do you consider the value of the interest in said property sold by A. H. French and wife, and J. Zabriskie and wife, representatives of the late firm of N. Webb & Co.?

Ans. I have known the property of Fort Fillmore or Brazito for more than twenty years past. I consider the value of the interest in said property sold by French & Zabriskie to be from $15,000 to $20,000.

J. HOUGHTON.

680 UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, commissioner in chancery for the first judicial district of said Territory, do hereby certify that the foregoing deposition was taken and reduced to writing under my direction, at my office, in Santa Fé, in said Territory, and that the time and manner in which it was taken was the time and manner agreed upon between Mr. Elkins, solicitor for the complainants, and Mr. Clever, solicitor for the defendants, and that in taking said testimony, and in the manner in which I had the same taken, I acted according to the agreement of said solicitors, made in my presence. And I further certify that, after the foregoing deposition had been reduced to writing, it was, according to the terms of said agreement, presented to said solicitor for the defendants, to enable him to make such objections to questions and answers as he deemed proper, and to cross-examine the witness if he
681 chose to do so, both of which he failed and declined to do. Said deposition was taken this day, and the above-named Joab Houghton was, before testifying, duly sworn by me to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause.

Witness my hand and seal this first day of August, A. D. 1870.

W'M BREEDEN,
Commissioner in Chancery.

On which said paper is the following endorsement, to wit:

G. E. Huntington, administratrix, &c., D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Deposition of Joab Houghton. Filed in my office, August 1st, 1870. W'm Breeden, clerk.

682 And, afterwards, to wit, on the 9th day of August, 1870, the following master's summons, underwriting, and acceptance of service thereon, was filed in the clerk's office, which said summons is in the words and figures following, to wit:

First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

In pursuance of the authority and directions contained in a decree rendered in this cause, whereby certain matters herein were referred to the undersigned master in chancery, I do hereby summon the parties to this cause to attend a hearing of the matters in reference before me in said cause, at the court-house, in the town of Las Vegas, in the county of San Miguel and Territory of New Mexico, at four o'clock
683 p. m. on Friday, the twelfth day of August, A. D. 1870.

W'M BREEDEN,
Master in Chancery.

LAS VEGAS, N. M., *August 8th*, 1870.

Underwriting.—To proceed upon the settlement of the master's report in the above-entitled cause, and to hear and consider exceptions to the master's draft report.

The solicitors of the parties are required to bring in their objections in writing.

W'M BREEDEN,
Master in Chancery.

Received of Juan Romero, sheriff of the county of San Miguel, a copy of the within summons, together with a copy of the master's draft report in the within-mentioned and entitled cause, at Las Vegas, N. M., this 8th day of August, A. D. 1870.

C. P. CLEVER,
Att'y for Def'd'ts.
S. B. ELKINS & T. D. WHEATON,
Sol's for Comp.

684 On which said summons is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Master's summons. Served, with master's draft report, at 4 o'clock p. m., August 8th, 1870. Filed in my office this 9th day of August, 1870. W'm Breeden, clerk.

And, afterwards, to wit, on the 13th day of August, A. D. 1870, the following objections to master's report were filed in the clerk's office, which said objections are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINIS., &C., & D. L. Huntington,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } In chancery.

Objections by complainants to draft report made in the above-entitled
685 *cause, by William Breeden, esq., master in chancery.*

1st. The allowance by the master of 50 per cent. of the full amount of debts due the firm of N. Webb & Co., at the time of the death of N. Webb, for worthless and uncollectable debts, is excessive, and not

more than twenty-five per cent. of said amount should have been allowed.

2nd. The evidence of H. V. Harris discloses the fact that, up to the time of the death of N. Webb, defendant Moore had drawn out of the firm of W. H. Moore & Co. $20,000 above all credits given him on the books. No account of this amount is made by the master in his report, when the same should have been regarded as collectable assets.

3rd. Said report contains no account of cash on hand at Fort Union, at the death of N. Webb, when the master could, from the entries in the cash-book, and entries made of remittances, easily have determined about or near the amount at that time, especially when it is charged in the bill that there was cash on hand. And the answer does not
686 deny the fact.

In all which particulars the complainants do*th* object to the said draft report.

S. B. ELKINS, *for Comp's.*

On which said objections is the following endorsement, to wit:

Gertrude E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Objections taken to master's draft report. Filed in my office this 12th day of August, 1870. W'm Breeden, master in chancery. Filed in my office this 13th day of August, 1870. W'm Breeden, clerk.

And afterwards, to wit, on the 13th day of August, A. D. 1870, the following paper was filed in the clerk's office, which said paper is in the words and figures following, to wit:

687 GERTRUDE E. HUNTINGTON & DAVID L. Huntington, her husband, *vs.* WILLIAM H. MOORE & WILLIAM C. Mitchell. } In chancery.

In answer to a notice from the master in chancery, dated August 8th, 1870, and served upon C. P. Clever, one of the solicitors of said defendants, the defendants make known to the said master that by rule in chancery, which prevails in this case, they cannot on this day be required to file their exceptions to the master's report made herein.

They state:

1st. That by the (83) eighty-third rule of the Supreme Court of the United States, and applicable to this case, the defendants are entitled to one month in which to file exceptions to the master's report from and after the date of the filing of said report in the clerk's office.

2nd. The said master's report has not as yet been filed in the clerk's office, as required by said rules. These defendants now
688 state that it would not be equitable in this case to require them to file their exceptions to the master's report in so short a time as has been specified in said notice from the date thereof.

3rd. The said notice was served upon the said attorney during the session of the district court for the county of San Miguel, and which from said time has continued and still is in session, and the said master has been the actual clerk thereof, and the attorneys of said defendants have been daily attending to causes pending in said court.

4th. That it is within the knowledge of said master that said attorneys have been necessarily employed by their clients in suits pending in said court.

5th. William H. Moore, the only resident defendant in this Territory, who has the personal management in behalf of the defendants, has not been present until last evening (August 11th) since some two or
689 three days before the service of said notice, and resides within the county of Mora, and knew nothing of the contents of said report until his said late arrival.

6th. The said report refers to a large and voluminous body of pleadings, exhibits, proofs, mercantile book', papers, and evidences considered and rejected, which make it absolutely necessary for a full extention of time to enable the defendants properly to prepare and present their exceptions to said report.

7th. That if the rule above cited requires the defendants to make and present their exceptions at the time fixed by the master, the record of the case, the facts and circumstances which now present themselves, render it both physically and mentally impossible for the defendants to have ready and present the exceptions at the time required by the master. They state that from such examinations as they have been able to make of said report, extraordinary and enormous errors and mistakes have been made by the said master in the examination of
690 the matters referred to him, and the conclusions at which he has arrived in his said report.

8th. The importance of the case and the amount involved, of themselves manifests that no hasty action on the part of the master should preclude the defendants from their full legal and equitable right as to time in the preparing of exceptions and the presenting of the same.

9th. The defendants, therefore, in view of the above reasons and others which might be mentioned, expect of the said master to postpone any action in regard to any exceptions which the defendants have a right to file to his report under the rules in equity above cited and referred to.

All of which is respectfully submitted.

CLEVER & BENEDICT,
For Def'd'ts.

On which said paper is the following endorsement, to wit:

Gertrude E. Webb, &c., D. L. Huntington, vs. W. H. Moore & W. C. Mitchell.

691 Filed in my office this 12th day of August, 1870.

W'M BREEDEN,
Master in Chancery.

Filed in my office this 13th day of August, 1870.

W'M BREEDEN, *Clerk.*

And afterwards, to wit, on the 15th day of August, A. D. 1870, the following certificate was filed in the clerk's office by the master in chancery, which said certificate is in the words and figures following, to wit:

First judicial district court, Territory of New Mexico. In chancery

GERTRUDE E. HUNTINGTON & DAVID L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. Mitchell.
} Chancery.

I, William Breeden, the master in chancery to whom certain mat-

ters in this cause were referred, under and by virtue of a certain decree rendered in this cause by this court on the 29th day of
692 March, A. D. 1870, having filed my report in this cause, in obedience to said decree, do hereby certify that I entered upon the examination of the matters referred as above stated on the 25th day of April, A. D. 1870; that on the 4th day of May, A. D. 1870, I issued and caused to be properly served a summons to the solicitors of the parties to this suit, to attend a hearing of the matters referred, at my office in the city of Santa Fé, on Mo'day, the 16th day of May, A. D. 1870; that on said day I was attended by Mr. S. B. Elkins, solicitor for the complainants, and by Hon. John S. Watts, solicitor for the defendants, and thereafter said solicitors were continuously in attendance at the hearing and examination of the matters referred as aforesaid, until the 13th day of June; and that subsequently I was attended by Mr. S. B. Elkins for the complainants, and Mr. Charles P. Clever for the defendants; that on the 8th day of August, A. D. 1870, I issued and caused to be duly served upon the solicitors of said parties a sum-
693 mons to attend a hearing in said reference, to proceed upon the settlement of the master's report, and to hear and consider exceptions or objections to the master's draft report, with notice to said solicitors of the requirement that they should bring in their objections in writing. Such summons, with a copy of the master's draft report, was served upon said solicitors at 4 o'clock p. m. of said day, and said hearing was fixed for four o'clock p. m. of the twelfth day of August, A. D. 1870, being four full days subsequent to the time of the service of said summons. I further certify that at said hearing I was again attended by Mr. Elkins for the complainants, and Mr. Clever for the defendants; that said solicitor for the complainants filed objections to said draft report, which were argued, considered, and overruled, and said objections in writing are filed with the papers in this cause; that neither the defendants nor their solicitors, nor any one for them or in their
694 behalf, filed any objections whatever to said draft report, but did file an application for further time or objection to the master's proceeding to report, which was not deemed reasonable, and was denied. Said application also appears in writing filed with the papers in this cause, and was the only paper filed or application made on behalf of said defendants on said hearing. The summons above referred to are annexed to this certificate.

Witness my hand and seal this 15th day of August, A. D. 1870.

W'M BREEDEN,
Master in Chancery.

On which said certificate is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Master's certificate.

Filed in my office this 15th day of August, 1870.

W'M BREEDEN, *Clerk.*

GERTRUDE E. HUNTINGTON, ADM'X, &C., DAVID L. HUNTINGTON,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Volume 3.

695 And be it further remembered that, on Tuesday, the 16th day

of August, A. D. 1871, being the second day of the August, A. D. 1870, term of the United States district court for the first judicial district of the Territory of New Mexico, in and for the county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington
vs.
WILLIAM H. MOORE & WILLIAM C. MITchell. } Chancery.

On motion of said defendants, by their counsel, which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now comes the said defendants W'm H. Moore and William C. Mitchell, by Benedict, Clever & Watts, their attorneis, and sug-
696 gests to the court that said complainants are non-residents of the Territory of New Mexico, and moves the court that the said complainants Gertrude E. Huntington & David L. Huntington be ruled to file bond, with security for the costs which have or may accrue in this case, if adjudged against them, in conformity with the provisions of sec. 47, page 200, of the compiled laws of New Mexico.

BENEDICT, CLEVER & WATTS,
For Def'ts.

On which said motion is the following endorsement, to wit:

Gertrude E. Huntington & David L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Chancery. Motion that complainants give bond for costs. Filed in open court this 16th day of August, 1870. W'm Breeden, clerk. Benedict, Clever & Watts, for def'ts.

And the said complainants are ruled to give security for costs in this cause.

697 And afterwards, to wit, on Tuesday, the 16th day of August, A. D. 1870, being the second day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington,
vs.
WILLIAM H. MOORE & WILLIAM C. MITchell. } Chancery.

And now come the said defendants by their counsel and move the court to grant them leave to amend their answer herein, which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now come the said defendants William H. Moore and William C. Mitchell, by their attorn*ies*, and move the court on the affidavit of said William H. Moore for leave to amend the answer of said def'ts, as
698 to the marriage of said Nathan Webb & Gertrude E. Shoemaker, so as to conform to the newly discovered facts in the case as described in said affidavit.

BENEDICT, CLEVER & WATTS,
For Def'ts.

On which said motion is the following endorsement, to wit:

Huntington vs. Moore & Mitchell. Chancery. Motion for leave to amend def'ts' answer to original bill. Filed in open court this 16th day of August, 1870. W'm Breeden, clerk. Benedict, Clever & Watts, for def'ts.

Which motion being argued by counsel, and the court being sufficiently advised in the premises, overrules said motion, to which ruling of the court the defendants by their counsel except.

And with the foregoing motion, and in support thereof, the following affidavits and exhibits were filed, which are in the words and figures following to wit:

GERTRUDE E. HUNTINGTON & DAVID L. Huntington
vs.
699 W'M H. MOORE & W'M C. MITCHELL. } Chancery.

This affiant, William H. Moore, upon his oath states that he is one of the defendants in the above-entitled cause of Gertrude E. Huntington and David L. Huntington, now pending in the district court for Mora County, New Mexico, against the said William H. Moore and William C. Mitchell as surviving partners of the firm of W'm H. Moore & Co., the subject-matter of which suit is for the settlement of the accounts of the firm of W'm H. Moore & Co., Moore, Adams & Co., and N. Webb & Co., and the ascertainment of the interest, if any, of the said Gertrude E. Huntington, if any, as wife of Nathan Webb, deceased, and administratrix of his estate, in the business of said firm.

The said affiant further states that since the filing of the original bill in this case by said complainants it became and was necessary for said defendants to file in aid of their answer herein a cross-bill against the said Gertrude E. Webb, now intermarried with David L. Huntington, and one Joab Houghton was also made defendant to said cross-
670 bill, having been custodian or pro tempore administrator upon the estate of Nathan Webb, deceased, at El Paso County, Texas, and to which cross-bill the said Gertrude E. Huntington and Joab Houghton have appeared and filed their answer to said cross-bill.

Said affiant would further state that, at the last term of this court, the original bill in this cause, with the answer of said W'm H. Moore and William C. Mitchell to said original bill, together with the exhibits in the cause, were, by order of the court, referred to W'm Breeden, master

in chancery, for the examination of the books, the taking of the depositions of the witnesses of the parties, and the making of a report in the case to the court, at its present term, for the consideration of the court.

This affiant would further state that, at the time of the reference of said cause to W'm Breeden, master in chancery, for examination and report and the taking of the evidence in the cause, the answer of Mrs. Gertrude E. Huntington to said cross-bill had not been filed, and the order
671 for the taking of evidence in the case does not state, authorize, or direct that said master in chancery take or hear any evidence in relation to the matters and things contained in said cross-bill, and the answer of the said Gertrude E. Huntington and Joab Houghton to the same, and it will be seen by reference to the record of the master in chancery that all evidence upon the matters in dispute, upon the objection of the complainants' attorneys, was excluded by the master in chancery, and no evidence has been permitted to be introduced as to said cross-bill and the answers to the said cross-bill.

Said affiant would further state at the last term of this court, said cross-bill not being at issue, no motion could be made to join or consolidate said cross-bill with the original bill herein, and no order was made directing said bill and cross-bill to be consolidated and conducted as one suit.

Said affiant would further state that for the causes above mentioned the said W'm H. Moore and William C. Mitchell have not had an
672 opportunity to take any evidence whatever in support of said cross bill, and in order that all matters of discovery, equity, and account set forth in said cross-bill may be heard and disposed of at the same time, and along with the subject-matter of the original bill of complainants and the answer of the said W'm H. Moore and William C. Mitchell thereto, this affiant asks that said cross-bill be consolidated with the original bill herein, and heard and determined at the same time, as many facts material and important to said defendants in their defence to said original bill said affiant expects to establish under said cross-bill.

Said affiant further states that it would be injurious to the interests of the said W'm H. Moore and William C. Mitchell to be compelled to try and finally dispose of the matters and things contained in the original bill until the evidence in support of the cross-bill filed by him in aid of their answer to the original bill herein has been fully taken and considered along with their answer to the original bill herein.

673 The said affiant would further state that the report of the master in chancery in this case was not made until the 13th day of August, 1870, and so much of said report of said master in chancery as relates to the rejection of the books of said firms as evidence in said cause has taken the said defendants W'm H. Moore and William C. Mitchell by surprise, and made it necessary for them to appeal to the court for further time to enable them to produce the evidence of other witnesses in this case in support of the facts set forth in the answer of the said William H. Moore and William C. Mitchell to the original bill herein.

Said affiant would further state that one Robert M. Crandall, of lawful age, and resident of Tucson, Arizoña Territory, is an important and material witness for him and his co-defendant in this case, and he expects to prove by said witness that all the goods, wares, and merchandise of the firm of N. Webb & Co. turned over to him, said Crandall, by Henry J. Cuniffe were sold and disposed of by said Crandall,
674 and all the proceeds were paid over by said Crandall to said de-

fendants W'm H. Moore and William C. Mitchell, and will correspond in amount with the books of W'm H. Moore & Co., and will correctly account for the balance of all the goods, wares, and merchandize of the firm of N. Webb & Co. not disposed of by the said Henry J. Cuniffe, and accounted for in his evidence, and, under such state of facts, said defendants claim that, in settling the business of said firm of N. Webb & Co., it is only just and equitable to charge the said defendants W'm H. Moore and W'm C. Mitchell with the net proceeds of the sale of said goods, wares, and merchandize, and not with a supposed and estimated value not having any real existence in fact. Said affiant considers that, if by good fortune and increase in the value of said goods, wares, and merchandise, the said defendants had been able to sell said goods for twenty thousand dollars more than the estimated value, that the money would not *of* been the property of the said
675 W'm H. Moore and William C. Mitchell, but of the firm of N. Webb & Co.; and if an actual loss occurred without any fault or negligence upon the part of said defendants, that the chancellor will not charge them with that loss, but credit them with the difference between the actual proceeds of the sale of said goods, wares, and merchandize and their estimated value prior to said sale.

Said affiant further states that Edward F. Mesick and Nestor Arnigo are important and material witnesses for him in rebuttal of the evidence of complainants, made so by the exclusion of evidence of the books, and no opportunity to examine them and other material witnesses has been given since the filing of the report of said master in chancery rejecting as evidence said books.

Said affiant further state' that said Nathan Webb, at his death, resided in El Paso, Texas, had no direct heirs or children him surviving, but had a mother, Sarah Webb, living and residing at Burlington, in the State of Iowa, as his only surviving parent.

Said affiant further states that said Gertrude E. Webb, now
676 Huntington, having taken out letters of administrationship on the estate of Nathan Webb, deceased, at El Paso, Texas, and having received several thousand dollars claimed by her as assets of said estate of Nathan Webb, deceased, appropriated the same to her own use, failed to make any report or give any account of the funds so received by her to the probate court of El Paso County, Texas, and, in September, 1867, the said Gertrude E. Webb, administratrix, left the State of Texas, and went to reside at Fort Union, Mora County, New Mexico, and, for said causes, on complaint of the securities of said Gertrude E. Webb, the probate court of El Paso County, Texas, in October, 1869, removed the said Gertrude E. Webb from her trust as administratrix of said estate, and all the acts and doings of the said administratrix, since said removal, are null and void, and said estate of Nathan Webb, deceased, in El Paso County, Texas, is now without any legal administrators upon it.

Said affiant would further state that, on the 2nd day of
677 July, 1868, said Gertrude E. Webb took out from the probate court of Mora County, New Mexico, ancillary letters of administration, and has received several thousand dollars as administratrix.

Said affiant further states that he herewith files a transcript of the record of all the proceedings of the said probate court of Mora County, New Mexico, marked Exhibit (A,) from which it appears that said Gertrude E. Webb was sworn according to the statements in said letters of administration, but said oath was not recorded, as required by law, nor has the said Gertrude E. Webb, as such administratrix, ever made any

inventory or statement, according to law, of the funds received by her as such administratrix, and has left the Territory of New Mexico since her marriage, and now resides somewhere in the State of New York.

Said affiant would further state that he is informed and believes that, after the removal of the said Gertrude E. Webb, as administratrix, by the probate court of El Paso County, Texas, and after the mar-
678 riage of the said Gertrude E. Webb with the said David L. Huntington, it became and was necessary for the said Gertrude E. Webb to take out new letters of administration on said estate and give new bond as such, before prosecuting any suit against any one in the capacity of administratrix of the estate of Nathan Webb, deceased.

This affiant further states that of all the amounts received by said Gertrude E. Webb as assets of the estate of Nathan Webb, deceased, nothing has been paid to the said Sarah Webb, entitled by the laws of New Mexico to one-half the net proceeds of the estate of her deceased son, Nathan Webb, and said defendants ask that all further proceedings herein be stayed until said Sarah Webb is made a party to this suit, in order that the decree in this case may be final as to all the parties in interest in the case.

Said affiant further states that, prior to the marriage of Nathan Webb with Gertrude E. Shoemaker, he was married to Priscilla Smith on the 6th day of June, 1855, and that, at the date of the said marriage
679 of said Nathan Webb with the said Gertrude E. Shoemaker, the said Priscilla Webb had never been legally divorced from said Nathan Webb, as will more fully appear by reference to a copy of proceedings in divorce hereby made a part of this affidavit marked as Exhibit (B) herein.

Said affiant further states that said defendants had supposed that said Nathan Webb and Gertrude E. Shoemaker had been legally married, and did not know, until the 13th of August, 1870, of the void nature of said proceedings in decree, when they were informed by their attorney, John S. Watts, of the contents of the record of decree and its void nature for want of proper jurisdiction in the case by the court. Said affiant asks that he be permitted to amend his answer to the original bill in this case by setting forth the true facts and exhibiting a copy of the record of decree in support of them.

Said affiant further states that he is advised by his attorn*ies* that, under the 83 rule of the Supreme Court of the United States, in
680 force in New Mexico, that said defendants W'm H. Moore and William C. Mitchell are entitled to have one month's time after the filing of said report of the master in chancery to except to said report, and they ask that said time be allowed them by order of the court.

Said affiant further states that this application for time to file exceptions to report of master in chancery, to amend answer, to produce further evidence in support of the answer of defendants to the original bill, and prove the facts in the cross-bill of said defendants, is not made for vexation or delay, but in order to have a full, fair, and final hearing of the cause, with all the evidence taken, and all the parties in interest properly before the court as parties to the record, and further saith not.

W. H. MOORE.

Subscribed and sworn to before me this 16th day of August, A. D. 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

681 G. E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Affidavit of W. H. Moore, filed in open court this 16th day of August, 1870. W'm Breeden, clerk.

EXHIBIT A.

(Copy.)

STATE OF TEXAS,
County of El Paso:

Whereas it has come to my knowledge that Nathan Webb, late of the county of El Paso, and State of Texas, died at Fort Bliss, Texas, on the 15th day of October, A. D. 1866, intestate, and whereas Gertrude E. Webb, wife surviving of the said Nathan Webb, deceased, did, on the 14th day of December, 1866, make application to me for letters of administration on the estate of the said deceased, as such wife surviving, and on the seventeenth day of said month of December did file her bond and affidavit as required by law:

Now, therefore, know ye, all whom it may concern, that I, Albert
682 H. French, probate judge of and for the county of El Paso, and State aforesaid, have and do by these presents appoint and constitute Gertrude E. Webb as legal administratrix of the said estate of Nathan Webb, deceased, with full powers as such, in conformity to law.

(Signed) ALBERT H. FRENCH,
Probate Judge.

Witness my hand and the seal of the county court, at office, this seventeenth day of December, A. D. 1866.

[SEAL.] (Signed) J. M. LUJAN,
Clerk County Court, E. P. C.

A true copy of the original in possession of Gertrude E. Webb, administratrix.

Witness—
(Signed) W. R. SHOEMAKER.

TERRITORY OF NEW MEXICO,
County of Mora:

Whereas it has come to my knowledge that Nathan Webb, late of the county of El Paso, State of Texas, died at Fort Bliss, on the fif-
683 teenth day of October, A. D. 1866, intestate, and whereas Gertrude E. Webb, wife surviving of said Nathan Webb, deceased, did, on the 27th day of July, A. D. 1868, make application to me for letters of administration on the estate of said Nathan Webb, deceased, as such wife surviving, and on the twenty-seventh day of said month of July did file her bond and affidavit as required by law.

Now, therefore, know ye, all whom it may concern, that I, Vicente Romero, probate judge of and for the county of Mora, and Territory aforesaid, have and do by these presents appoint and constitute Gertrude Elizabeth Webb as legal administratrix of the said estate of Nathan Webb, deceased, with full powers as such according to law.

(Signed) VICENTE ROMERO,
Probate Judge.

Witness my hand and the seal of the county court of office this twenty-seventh day of July, A. D. 1868.

[SEAL.] (Signed) PABLO VALDEZ,
Escribano, (Clerk.)

684 Know all men by these presents that we, Elizabeth Webb as principal, and George Berg, V. St. Vrain, and W. R. Shoemaker, and Henry Biemboum as her securities, are held and firmly bound unto the Territory of New Mexico, in the sum of fifty thousand dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents, signed and sealed this the 27th day of July, A. D. 1868.

The condition of the above obligation is such that whereas the above-named Elizebeth Webb has this day been appointed administratrix of the estate of the deceased Nathan Webb, now if the said Elizabeth Webb shall well and truly and faithfully perform her duties as such administratrix of said estate of Nathan Webb, then this obligation to be null and void, otherwise to remain in full force and effect.

(Signed)	ELIZEBETH WEBB.	[SEAL.]
(Signed)	GEORGE BERG.	[SEAL.]
(Signed)	W. R. SHOEMAKER.	[SEAL.]
(Signed)	VICENTE ST. VRAIN.	[SEAL.]
(Signed)	HENRY BIEMBOUM.	[SEAL.]

685 NOVIEMBRE 3, A. D. 1869.

Enregistrada la presente causa en corte avierta.

[Recorded in open court, November 3rd, A. D. 1869.]

TERRITORY OF NEW MEXICO,
County of Mora:

In the probate court within and for the county of Mora.—Administration of the estate of Nathan Webb.

And now comes Theodore Mignault who appears as attorney Mrs. Gertrude E. Huntington, late Mrs. Gertrude E. Webb, and asks an order of this court to be entered that Mrs. Gertrude E. Huntington, late Mrs. Gertrude E. Webb, be required to present to this court a statement of the accounts of her administration of the estate of Nathan Webb, deceased, upon the final determination and decree in the suit now pending in the district court, of "Gertrude E. Webb, administratrix, versus William H. Moore and William C. Mitchell, in chancery.

Upon due consideration of the premises, the court so orders, in
686 accordance with the terms of the petition of said attorney.

TERRITORY OF NEW MEXICO,
County of Mora:

Administration of the estate of Nathan Webb, deceased.

To the honorable José Le Deaux, probate judge:

The undersigned, administratrix of the estate of the late Nathan Webb, deceased, states that she is unable, in compliance with the statutes in such case made and provided, to present before this court, at this the proper term thereof, a statement of the accounts of her administration,

for the reason that the whole of said estate, both real and personal property, is still in the hands of William H. Moore and William C. Mitchell' surviving partners of the late firms of William H. Moore & Co. and N. Webb & Co., of which firms the said deceased was a partner, and being thus illegally and wrongfully with'eld from her by the said surviving partners, she as administratrix and heir of the deceased has
687 brought suit in chancery in the court of the first judicial district for the recovery of the same, and which said suit is still pending and undetermined.

She therefore prays the court to accept and order to be filed this her report.

(Signed) G. E. HUNTINGTON,
Formerly G. E. Webb, Adm'x.

Sworn to and subscribed before me this twenty-seventh day of October, A. D. 1869.

Witness my hand and the seal of the district court of the first judicial district of the Territory of New Mexico.

[SEAL.] (Signed) W'M BREEDEN,
Clerk of said Court.

On which said report is the following endorsement, to wit:

Filed in open court this 3rd day of November, A. D. 1869. (Signed) Severiano Martinez, clerk of the probate court.

TERRITORY OF NEW MEXICO,
County of Mora:

I, Severiano Martinez, clerk of the probate court of Mora
688 County, do hereby certify that the above and foregoing record is a full, true, and correct transcript of all the papers and proceedings on file in the case of Gertrude E. Webb, administratrix of the estate of Nathan Webb, deceased, in said probate court, and that said transcript contains a true copy of all the papers on file in said cause.

Witness my hand and seal of said probate court this 16th day of August, 1870.

[SEAL.] SEVERIANO MARTINEZ,
Escribano, (Clerk.)

On which said exhibit is the following endorsement, to wit:

Exhibit (A.) G. E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Filed in open court this 16th day of August, 1870. W'm Breeden, clerk.

EXHIBIT B.

Pleas held before the honorable John Petit, sole judge of the Tip-
689 pecanoe circuit court in the State of Indiana, and at the April term of said court, in the year of our Lord one thousand eight hundred and fifty-seven, to wit:

MARCELLA S. WEBB *vs.* NATHAN WEBB. } Divorce.

Be it remembered that, at a term of Tippecanoe circuit court in the State of Indiana, begun and held at the court-house in the city of La

Fayette, in the county of Tippecanoe, in said State, on Monday, the 6th day of April, in the year of our Lord one thousand eight hundred and fifty-seven, it being the first Monday in said month, and on Friday, the forty-seventh judicial day of said term, it being on the 10th day of July, A. D. 1857, and before the honorable John Pettit, sole judge of said court, comes the plaintiff, by Wilson & Gardner, her attorneys, and on motion files the following complaint against said defendant, to wit:

Complaint.

THE STATE OF INDIANA,
Tippecanoe County, ss:

690 In circuit court of said county, at April term, 1857.

MARCELLA S. WEBB
vs.
NATHAN WEBB.

Marcella S. Webb complains of Nathan Webb, and says that said plaintiff is a bona fide resident of said county; that on or about the sixth day of June, A. D. 1865, the said plaintiff, her maiden name being Marcella Smith, intermarried with said defendant, and with him took up her residence at said county.

She further says that from and after said marriage aforesaid, the said plaintiff conducted herself towards said defendant in all things as a dutiful and affectionate wife ought, and continued to reside with said defendant up to the time hereinafter mentioned, at the county aforesaid, but she charges that said defendant, unmindful of the duties incumbent upon him as a husband, and of his marriage vow, during the time aforesaid, treated this plaintiff with a cold and cruel neglect, denying her the pleasure of his society, and depriving her of those attentions
691 due, and which she had a right to expect from, a husband.

She further charges that said defendant, on or about the twenty-second day of July, A. D. 1856, abandoned her, said plaintiff, at said county, and left said county, and has never to her knowledge or belief returned thereto, or to her, said plaintiff, and that since said time she has not received from him any means of support whatever, nor has he provided or offered to provide her with the same.

She further charges, upon information and belief, that said defendant, at various times since their marriage aforesaid, has been guilty of the crime of adultery with various persons to the plaintiff unknown; or said plaintiff says, that by reason of the premises her affections have become so alienated from said defendant, that no reconciliation can ever be brought about between them, and she prays that the bonds of matrimony now existing between her and said defendant be forever and finally dissolved, and a divorce granted according to the statute
692 in such case made and provided, and for such other and further relief as to the court in the premises shall seem meet.

MARCELLA S. WEBB,
By WILLIAM GARDNER, *her Attorney.*

And comes the said defendant by Gregory, his attorney, and enters his appearance and waives the issuing and service of process, and files the following answer, to wit:

Answer.

THE STATE OF INDIANA,
Tippecanoe County, ss:

In circuit court of said county, at April term, 1857.

NATHAN WEBB
ads.
MARCELLA S. WEBB.

The said defendant for answer to said complaint says, that he denies each and every allegation in said complaint, and prays to be dismissed with his costs.

July 9th, 1857.

ROBERT C. GREGORY,
Att'y for Def't.

And thereupon this cause for trial is submitted to the court, and the court after hearing the evidence, and being fully advised in the premises, do order, adjudge, and decree that the bans of matri-
693 mony existing between the said plaintiff and the said defendant be, and the same are, by the court dissolved, annulled, and set aside, and held for nought, on account of the misconduct of the defendant, according to the statute in such cases made and provided, and the court order that the plaintiff pay the costs and charges herein.

THE STATE OF INDIANA,
Tippecanoe County:

I, Daniel Royse, clerk of the Tippecanoe civil circuit court, in the State of Indiana, do hereby certify that the above and foregoing is a true, full, and complete transcript of the record of the proceedings had, and judgment and decree rendered, in the above and foregoing entitled cause, as the same appears of record now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office, in Lafayette, on this 5th day of July, 1869.

[SEAL.] DAN'L ROYSE, *Clerk.*

[50-ct. int. rev. stamp, canceled.]

694 STATE OF INDIANA,
Tippecanoe County, ss:

I, Charles H. Test, presiding judge of the Tippecanoe civil circuit court, within and for the county of Tippecanoe, hereby certify that the foregoing certificate and attestation of Daniel Royse, the clerk of the said Tippecanoe civil circuit court, is in due form of law, as witness my hand this 6th day of July, 1869.

CHARLES H. TEST.

[10-ct. int. rev. stamp, canceled.]

UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, clerk of the district court for the first judicial district of said Territory, do hereby certify that the above and foregoing

is a true and perfect copy of a transcript certified under the seal of the Tippecanoe civil circuit court of the State of Indiana, on file in my office.

Witness my hand and the seal of said court this 16th day of August, A. D. 1870.

[SEAL.] W'M BREEDEN, *Clerk.*

695 On which said exhibit is the following endorsement, to wit:

Exhibit B. Filed in open court this 16th day of August, 1870. W'm Breeden, clerk.

And on the hearing of the said motion for leave to amend defendant's answer in the said cause, the following cross-bill and exhibits were read in support of said motion, which are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

District court, 1st judicial district, Mora County, August term, A. D 1869.

To the Hon. Joseph G. Palen, chief justice of the supreme court of the Territory of New Mexico, and judge presiding in the first judicial district, in and for Mora County, New Mexico, at the August term of said court, 1869.

The said respondent and William C. Mitchell, by way of cross-bill and as complainants in this case of Gertrude E. Webb, as admin-
696 istratrix of the estate of Nathan Webb, deceased, against the said respondent and William C. Mitchell, would state to the court that one Joab Houghton, formerly a resident of El Paso County, Texas, and now a resident of Santa Fé County, New Mexico, and brother-in-law of the said complainant, without the request or consent of the said William H. Moore and William C. Mitchell, and contrary to their wishes as surviving partners of Nathan Webb, deceased, took upon himself the care and management of the business of the firm of N. Webb & Co., and in the county court of El Paso County, Texas, took out letters of administration upon the estate of Nathan Webb, deceased, and under said letters of administration unlawfully took possession of all the goods, wares, and merchandise, books and money of the said firm of H. Webb & Co., and continued to manage and control the said business and property of said firm from the death of said Nathan Webb, on the 15th day of
697 October, 1866, until the 2nd day of December, 1866, during which time the said Joab Houghton took out of the money of the said firm of N. Webb & Co. the sum of $2,870, and goods to the amount of $29.18, making in all the sum of $2,899.18, and converted the same to his own use, and has wholly failed to account for the same to this respondent, and the said William H. Mitchell, as surviving partners of the firm of N. Webb & Co., and also failed to account to the county court of El Paso, Texas, for said money and goods, so taken possession of by said Joab Houghton, as such administrator, of the estate of Nathan Webb, deceased.

This respondent and the said William C. Mitchell further states that the said Joab Houghton is in the possession and occupancy of a house and lots situate in El Paso County, Texas, purchased by the said Nathan

Webb in his life-time, with the money of said firm of N. Webb & Company, and deeded to said Nathan Webb, which said house and lots are of the value of $1,600, and are known and designated on the plat
698 of the town of El Paso, as made by Anson Mills, as the Overland Mail Company lots and buildings. This complainant and the said William C. Mitchell, as the surviving partners of the said firm of N. Webb & Co., said firm consisting of the said William H. Moore, William C. Mitchell, and the said Nathan Webb, deceased, in consequence of bad management and losses attending said business, upon the winding up of said business failed to have assets with which to pay the debts of said firm, and after using all the available assets of said firm, there still exists an indebtedness of said firm of N. Webb & Co. to the firm of W'm H. Moore and Company, consisting of said William H. Moore and William C. Mitchell, as surviving partners of the firm of William H. Moore & Co., in the sum of $35,019.70, and for the payment of which said debt, being the only unpaid debt of the firm of N. Webb & Co., said property ought to be made assets in the hands of the said surviving partners for the liquidation of said debt.

The said William H. Moore and William C. Mitchell further state
699 that the title-deeds to said property are not in the possession of said complainants, and all supposed to be in the possession of the said Joab Houghton and the said Gertrude E. Webb, administratrix of the estate of Nathan Webb, deceased; for which reason the said complainants cannot give the numbers nor boundaries of said lots at this time.

The said complainant would further state, that the said Nathan Webb, in his life-time, purchased, with the funds of the firm of N. Webb & Co., for the sum of $500, of John S. Watts, lot No. 109 in block No. 24, in the town of El Paso, Texas, and in his life-time paid the said John S. Watts for said lot, and after the death of said Nathan Webb, to wit: on the 3rd day of November, 1866, the said Gertrude E. Webb procured of the said John S. Watts a deed in her name to said lot, when in fact said property equitably and rightfully belongs to the said complainants as assets of N. Webb & Co., with which to pay the debts of said firm.

Said complainants would further state, that on the 20th day of May, 1868, one James S. Zebriskie and Adelaide, his wife, and one Al-
700 bert H. French and Benancia, his wife, and one Leonora Percy, wife of Frederick A. Percy, deceased, were indebted to the said N. Webb & Co., as appears by the books of said company, in the sum of $9,697.34, and in payment of said indebtedness they executed deeds for their undivided sixth interest in a certain tract of land situate in Doña Aña County, New Mexico, containing twenty-one thousand acres of land, all of which will more fully appear by reference to copies of two of said deeds herewith filed and marked as Exhibit I & J; and a certified copy of the remaining deed will be filed as soon as the same can be obtained from the records in San Elizario, El Paso County, Texas, an' in Doña Aña County, New Mexico, where the same is recorded, and said copy cannot now be exhibited for the reason that the original has been mislaid.

Said complainants would further state that the entire consideration for said interest in said lands was paid by the firm of N. Webb & Co., and not a dollar of the consideration was paid by Elizebeth Webb;
701 yet by mistake in the execution of said deeds her name was inserted in said deeds as one of the parties to whom said titles were executed, when the said titles should of right have been executed to the said William H. Moore and William C. Mitchell, as surviving partners

of the firm of N. Webb & Co., in order that said property might be made assets in the hands of said complainants as surviving partners of the firm of N. Webb & Co., for the payment of the debts of said firm.

Said complainants would further state that it will appear by reference to the said deeds of conveyance and the books of said N. Webb & Co., that the consideration expressed in said deeds is a greater sum than the indebtedness of said Zabriskie, French, and Percy, as charged in the books of N. Webb & Co., and said discrepancy is explained by the fact that the interest on the notes is not charged up on the books, but was included in the consideration set forth in said deeds.

The said complainants state that the said William H. Moore resides in Mora County, New Mexico, and the said William C. Mitchell
702 resides in St. Louis, Missouri, and the said Gertrude E. Webb, described in said deeds as Elizebeth Webb, resides in Mora County, New Mexico, and the said Joab Houghton resides in Santa Fé County, New Mexico, and the said complainants ask that process issue against said defendants Joab Houghton and Gertrude E. Webb, returnable at the next term of this court.

The said complainant would further state that the said Nathan Webb and Gertrude E. Webb, at the time of their marriage, had no property of any kind except their wearing apparel, and all the property accumulated during said marriage was ganancial property of said marriage community, and at the death of said Nathan Webb, without will or descendants, all of said estate, both real and personal, of the said Nathan Webb, deceased, situate in New Mexico, descended to the said Gertrude E. Webb one-half, and to Mrs. Sarah Webb, mother and only surviving parent of Nathan Webb, deceased, and a resident of Burlington,
703 in the State of Iowa, the other half, and all the personal estate of the said Nathan Webb, deceased, situate in the State of Texas, descended absolutely to the said Gertrude E. Webb, his wife, and one-half the real estate situated in said State of Texas, also descended to said wife, and the remaining half of said real estate descended to the said Sarah Webb, mother of said Nathan Webb, deceased, after the payment of debts of said community.

The said complainants would further state that it appears by the exhibits filed with the answer of the said William H. Moore to the bill of Gertrude E. Webb against him and others, that said Nathan Webb, in his life-time, drew out, for his own personal use, from the firm of N. Webb & Co., the sum of $23,130.59, out of the firm of Moore, Adams & Co. $965.80, and out of the firm of W. H. Moore & Co. the sum of $3,716.01, making in all the sum of $27,812.40; and that since the death of said Nathan Webb the said Gertrude E. Webb has received from the firm of W'm H. Moore & Co. the sum of $11,044.10 cents, and from the firm of N. Webb & Co., the said William H. Moore and William
704 C. Mitchell being surviving partners of said firm, the sum of $5,211.98, making in all received by the said Nathan Webb, in his life-time, and the said Gertrude E. Webb since his death, the sum of $44,068.48 cents; and to this sum should be added the sum of $2,899.18 in money and goods taken by the said Joab Houghton from the business of N. Webb & Co., during the brief period of his administration upon the estate of said Nathan Webb, deceased, for which said Houghton has in no manner accounted.

Said complainants would further state that said Nathan Webb, in his life-time, and the said Gertrude E. Webb since his death, have been paid by said William H. Moore & Co. more than the interest and share of the said Nathan Webb amounts to in the business of W'm H. Moore & Co.,

W'm H. Moore, Adams & Co., and N. Webb & Co., and if, by the sale of real estate or the collection of bad debts, anything further should be at any time due from said W'm H. Moore & Co. to the estate of Nathan Webb, deceased, the same will equitably and justly belong to
705 Sarah Webb, the mother of said Nathan Webb, who does not yet appear to have received anything from any source of the estate of the said Nathan Webb, deceased.

The said complainants ask that the said Joab Houghton and Gertrude E. Webb be required to answer all the material allegations in this cross-bill as fully as if specially interrogated upon the same, allegation by allegation, and paragraph by paragraph, and that the said Joab Houghton and Gertrude E. Webb be required to discover and produce the title-deeds to all the real estate, houses, and lots owned by the said Nathan Webb, deceased, at the time of his death, in the town of El Paso, Texas, or duly authenticated copies of the said title deeds, and that the said Gertrude E. Webb be required to produce a certified copy of the deed to lot No. 109, in block No. 24, in the town of El Paso, Texas, and to state whether she ever paid the said John S. Watts the said $500, mentioned in said deed, or whether the same was not paid by the said Nathan Webb in his life-time. The said complainants ask that
706 said Joab Houghton be required to disclose by what right, and under what title he occupies, uses, and claims the house and lot in El Paso, Texas, called the overland mail property and buildings, and that he exhibit a duly-authenticated copy of his title to the same; and if the title is in the name of Nathan Webb, deceased, and in his possession or control, that he exhibit with his answer a certified copy of said title. The said complainants ask that the said interest in the Brozito tract of land be sold, and the proceeds be paid to said complainants as assets of the firm of N. Webb & Co., for the payments of debts of said firm; that the title to Gertrude E. Webb to lot No. 109, in block No. 24, in the town of El Paso, Texas, be decreed to said complainants, to whom it rightfully belongs, as surviving partners of N. Webb & Co., in order that the same may be made assets for the payment of the debts due by N. Webb & Co., and unpaid, and for the payment of which there is no other available means. Said complainants ask that said Joab Hough-
707 ton be decreed to pay to said complainant the said sum of $2,899.18, in money and goods belonging to said complainants as surviving partners of the firm of N. Webb & Co., and taken by him as administrator of the estate of Nathan Webb, deceased, and not accounted for, but appropriated to his own individual use, or that of the said Nathan Webb, deceased.

The said complainants ask that the court take equitable jurisdiction of the matters of account, trust, and discovery asked for in this cross-bill, and that upon the premises being found true, to decree to said complainants such specific and general relief in the premises as the equity and justice of the case may demand, and as in duty bound they will ever pray, &c.

WILLIAM H. MOORE, &
WILLIAM C. MITCHELL,
By CLEVER & WATTS, *Att'ys.*

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

W', William H. Moore and William C. Mitchell, upon our oath
708 state that the matters and things set forth in the above cross-bill, so far as stated from our own knowledge, are true in substance

and in fact, and so far as stated from information of others, they believe them to be true.

W. H. MOORE,
W. C. MITCHELL.

Subscribed and sworn to before me this 18th day of August, 1869.

J. G. PALEN,
C. J. & C.

Filed in my office this 18th day of August, 1869.

W'M BREEDEN, *Clerk.*

OFFICE OF PROBATE JUDGE, EL PASO COUNTY, TEXAS,
October 19th, 1866.

Whereas it has come to my knowledge that Nathan Webb, late a resident of said county, died intestate, on Sunday last, at said county, possessed of a large estate in real and personal property; and whereas it appears to me that the interests of said estate require the immediate appointment of an administrator, pro tem., for the custodianship, safe-keeping, security, and management of said estate, until the final
709 appointment of an administrator, or administrators, with full powers to settle up said estate.

And it further appearing to me that the Hon. Joab Houghton, a brother-in-law to the said deceased, is a suitable person for such custodian:

Therefore be it known that I, Albert H. French, probate judge of said county, do hereby appoint the said Joab Houghton administrator, pro tem., and custodian of said estate, said appointment to continue in force under the provisions of the law of said estate, and subject to the further orders this court herein.

Given under my hand and the seal of said court this 19th day of October, A. D. 1866.

(Signed) A. H. FRENCH.
Probate Judge.

Attest:
(Signed) J. M. LUJAN,
Clk Probate Court, E. P. C.

I certify that the foregoing is a true and correct copy taken from the records book of probate court in my office.

[SEAL.] H. B. AMITY,
Probate Clk, pro tem., E. P. C.

710 Filed in my office this 4th day of October, 1869.

W'M BREEDEN, *Clerk.*

THE STATE OF TEXAS, *County of El Paso:*

Know all men by these presents that we, Joab Houghton as principal, and Henry J. Cuniffe and William W. Mills as securities, are held and bound unto the probate judge of El Paso County in the sum of five thousand dollars, for the payment of which, well and truly to be made unto the said probate judge, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, signed with our hands, and sealed with our seals, the seals being scrowls, this 20th day of October, A. D. 1866.

The condition of this obligation is such, that whereas the above bound Joab Houghton has been appointed administrator, pro tem., by the said probate judge, of the estate of Nathan Webb, deceased: Now, if
711 the said Joab Houghton shall well and truly perform all the duties required of him under said appointment, then this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed)	J. HOUGHTON.	[SEAL.]
(Signed)	HENRY J. CUNIFFE.	[SEAL.]
(Signed)	W. W. MILLS.	[SEAL.]

Approved.
(Signed) A. H. FRENCH,
Probate Judge.

I certify that the foregoing is a true and correct copy taken from the records book of probate court in my office.
[SEAL.] H. B. AMITY,
Probate Clk, pro. tem, E. P. C.

Filed in my office this 4th day of October, 1869.
W'M BREEDEN, *Clerk.*

J. Houghton, admi's. pro tem., in account with the estate of Nathan Webb dec'd.

1866.		Dr.
Oct.	20. To cash to self	2,000 00
"	24. " " " "	200 00
"	30. " " for Amity	100 00
Nov.	1. " " self	100 00
"	4. " " "	100 00
712	Nov. 22. To cash, Doct. Christian	200 00
	" " " " self	120 00
		$2,820 00

1866.	SUPRA.	Cr.
Oct. 20.	By cash, N. P. Bacon	1,000 00
	do. H. B. Amity	100 00
	" A. M. Hunt	10 50
	" J. M. Lujan, clerk of probate	5 00
	" Dr. Christian	200 00
	real favor of estate	1,504 50
Allowed by probate court for services as administrator of the property of the estate, from Oct. 20th to Dec. 20th, 1866.		1,000 00
Bal. due estate		$504 50

STATE OF TEXAS, EL PASO COUNTY, *ss:*

Before me, the undersigned, judge of probate court, personally appeared Joab Houghton, admi's. pro tem., of the estate of Nathan Webb, dec'd, and made oath, and says that the above statement of account is correct, and that the as administrator, pro tem., as custodian roformed.

(Sig'ed) J. HOUGHTON.

Subscribed and sworn before me this the 4th day of December, A. D. 1867.

(Signed) A. H. FRENCH, *Probate Jugude.*

713 Approved.

(Signed) A. H. FRENCH,
Probate Judge, El Paso Co., Texas.

I certify that the foregoing is a true and correct copy taken from records book of probate court in my office.

[SEAL.] H. B. AMITY,
Probate Clk, pro tem., E. P. C.

Filed in my office this 4th day of October, 1869.

W'M BREEDEN, *Clerk.*

I certify that I have examined the papers, and upon examination I found that no inventory was taken, as Joab Houghton was only administrator pro tem., and had temporary charge only.

[SEAL.] H. B. AMITY,
Probate Clk, pro tem., E. P. C.

Filed in my office this 4th day of October, 1869.

W'M BREEDEN, *Clerk.*

SAN ELIZARIO, TEXAS, *Sept.* 24, 1869.

I certify that H. B. Amity was duly appointed city clerk, pro tem., of El Paso, Texas, to date from Sept. 18th, 1869.

A. H. FRENCH,
County Judge, E. P. C.

714 Filed in my office this 4th day of October, 1869.

W'M BREEDEN, *Clerk.*

STATE OF TEXAS, *El Paso County:*

DECEMBER 14*th*, 1866.

To the Honorable Albert H. French, chief justice of El Paso County aforesaid:

The undersigned, Gertrude E. Webb, respectfully represents to your honor that she is the surviving wife of Nathan Webb, deceased, late of the said county of El Paso, who died at Fort Bliss, in said county, on the fifteenth day of October, A. D. 1866, without leaving any lawful will, so far as petitioner knows and believes.

Your petitioner, therefore, in accordance with the statute in such case made and provided, applies to your honor to grant her letters of administration on the estate of the deceased, and respectfully prays that your honor *with* be pleased to so order.

Given under my hand on the day and year first above written.

(Signed) GERTRUDE E. WEBB.

715 I certify that the foregoing is a true and correct copy taker from records book of probate court in my office.

[SEAL.] H. B. AMITY,
Probate Clk, pro tem., E. P. C.

Filed in my office this 4th day of October, 1869.

W'M BREEDEN, *Clerk*

SAN ELIZARIO, TEXAS, *Dec.* 22, 1866.

STATE OF TEXAS, *County of El Paso:*

I, A. H. French, by authority of law do hereby appoint and confirm Gertrude E. Webb, of El Paso County, State of Texas, as administratrix of the estate of N. Webb, deceased. No objection having been made, and *her* having given good and sufficient bond, which has been approved by me, will enter upon the execution of her duties according to law.

Given under my hand and seal this 22nd day of December, A. D. 1866.

[SEAL.] (Signed) A. H. FRENCH,
Probate Judge, E. P. C.

716 I certify that the foregoing is a true and correct copy taken from record book of probate in my office.

[SEAL.] H. B. AMITY.
Pro. Clk, pro tem., E. P. C.

Filed in my office this 4th day of October, 1869.
W'M BREEDEN, *Clerk.*

THE STATE OF TEXAS,
County of El Paso:

I, Gertrude E. Webb, having been appointed administratrix of the estate of Nathan Webb, deceased, do solemnly swear that the said deceased died without leaving any lawful will, so far as I know or believe, and that I will well and truly perform all the duties of administratrix of the said estate.

(Signed) GERTRUDE E. WEBB.

Sworn to and subscribed before me this the 18th day of December A. D. 1866.

(Signed) A. H. FRENCH,
Probate Judge.

I certify that the foregoing is a true and correct copy taken from the records books of probate court in my office.

[SEAL.] H. B. AMITY,
Probate Clk, pro tem., E. P. C.

717 Filed in my office this 4th day of October, 1869.
W'M BREEDEN, *Clerk.*

THE STATE OF TEXAS,
County of El Paso:

Know all men by these presents that we, Gertrude E. Webb as principal, and William Moore and Henry J. Cuniffe as securities, are held and firmly bound unto the chief justice of the county of El Paso in the sum of one hundred thousand dollars, for the payment of which, well and truly to be made unto the said chief justice, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, signed with our hands and sealed with our seals, the seals being scrawls, the seventeenth day of December, A. D. 1866.

The condition of the above obligation is such that, whereas the above bounded Gertrude E. Webb has been appointed by the chief jus-

tice of the county of El Paso administratrix of Nathan Webb, deceased:

Now, if the said Gertrude E. Webb shall well and truly perform
718 all the duties required of her under said appointment, then this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) GERTRUDE E. WEBB. [SEAL.]
(Signed) W. H. MOORE. [SEAL.]
(Signed) H. J. CUNIFFE. [SEAL.]

I certify that the foregoing is a true and correct copy taken from records book in my office.

[SEAL.] H. B. AMITY,
Pro. Clk, pro tem., E. P. C.

Filed in my office this 4th day of October, 1869.
W'M BREEDEN, *Clerk.*

Cancelled Sept., 1869. Appointed adminis. New Mexico.

STATE OF TEXAS,
County of El Paso:

Know all men by these presents that I, John S. Watts, for and in consideration of the sum of five hundred dollars, the receipt whereof is hereby acknowledged, have bargained, sold, released, and conveyed, and by these presents do bargain, sell, release, and convey unto Gertrude E. Webb, her heirs and assigns, forever, the following
719 described property:

A certain house and lot lying and being situated in the town of El Paso, in the county of El Paso, and State of Texas, and known as lot No. 109, in block No. 24, together with all and singular the rights, tenements, and appurtenances thereunto belonging.

To have and to hold all and singular the premises above mentioned unto the said Gertrude E. Webb, her heirs and assigns forever. And I do bind myself, my heirs, executors, administrators, and assigns, to warrant and defend unto the said Gertrude E. Webb, her heirs, executors, administrators, and assigns, the title to the above-described property, in fee-simple forever.

Given under my hand and seal this 5th day of November, A. D. 1866.

(Signed) JOHN S. WATTS. [SEAL.]

Witness:
(Signed) WARD B. BLANCHARD.
J. M. LUJAN.

STATE OF TEXAS,
County of El Paso:

720 Before me, J. M. Lujan, clerk of the county court of the aforesaid county and State, personally appeared John S. Watts, to me well known, who acknowledged that he signed the foregoing instrument of writing for the purposes and considerations therein expressed.

In testimony whereof I hereunto sign my name and affix my official seal, at office, this 15th of November, A. D. 1866.

J. M. LUJAN,
Clerk County Court, E. P. C.

I certify that the foregoing is a true and correct copy from the records in my office, taken from book C, pages 281, 282.

[SEAL.] H. B. AMITY,
Clk, pro tem., E. P. C.

Filed in my office this 4th day of October, 1869.
W'M BREEDEN, *Clerk.*

No. 24.] *United States marshal's deed.*

This indenture made and entered into this 19th day of
721 December, in the year of our Lord one thousand eight hundred and sixty-five, by and between Abraham Cutler, marshal of the United State' of America for the Territory of New Mexico, for and in behalf of the United States of America, and Nathan Webb, of the county of El Paso, State of Texas, witnesseth:

That whereas a certain lot of land situated in El Paso County, State of Texas, and bounded as follows: and undivided seven-eighths, $\frac{7}{8}$, of lots No. 67 and 68, in block No. 12, and lots No. 106, 107, 108, 109, 110, and 111, in block No. 24, situate in the town of Franklin, county of El Paso, State of Texas, has been seized by said marshal as the property of Josiah H. Crosby, Simeon Hart, John J. Gillett, and Henry J. Gillett, supposed to be in armed rebellion against the Government of the United States, and in all respects aiding and abetting said rebellion; and whereas by the decree of our United States district court for the third judicial district in said territory made and decreed
722 after monition duly published, as follows:

"Third judicial district, Territory of New Mexico.

"The President of the United States of America to the marshal of the district of said Territory of New Mexico, greeting:

"Whereas a libel hath been filed in the third judicial district court of the said Territory of New Mexico, on the 23rd day of December, A. D. 1865, by Theodore D. Wheaton, esq'r, district attorney of the United States of America, against a certain tract of land, or house and lot of land, situated in the county of El Paso, State of Texas, and district aforesaid, described as follows: an undivided seven-eighths, $\frac{7}{8}$, of lots No. 67 and 68, in block No. 12, and lots No. 106, 107, 108, 109, 110, and 111, in block No. 24, situate in the town of Franklin, county of El Paso, and State of Texas, for reasons and causes in the said libel mentioned; and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the
723 said real estate may be cited, in general and special, to answer the premises, and all due proceedings being had, that the said real estate may, for the causes in the said libel mentioned, be condemned, and the proceeds thereof distributed according to law.

You are, therefore, hereby commanded to attach the said real estate, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof distributed according to the prayer of the said libel, that they be and appear before the said court on the first day of their next term, to be begun and held in and for the said district of the said Territory and county of Doña Aña, at the court-house of said county, on the sixth day of

November, A. D. 1865, then and there to interpose a claim for the same, and make their allegations in that behalf, and what you shall
724 have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. Joab Houghton, associate justice of the supreme court of the said Territory of New Mexico, and presiding judge of the third judicial district court thereof, and the seal of said court, this 23rd day of September, A. D. 1865.

[L. S.] (Signed) "SAM. J. JONES, *Clerk.*"

It is ordered, adjudged, and decreed that the property described in the libel in said case, to wit: an undivided seven eighths ($\frac{7}{8}$) of the following lots, No. 67 and 68, in block No. 12; also, lots No. 107, 108, 109, 110, and 111, in block No. 24, in the town of Franklin, Texas; also, lot No. (106,) one hundred and six, in block No. 24, be condemned as forfeited to the United States, and that the same be sold at the public plaza of the town of Franklin, in the county of El Paso and State of Texas, by the marshal of the United States for the district of
725 New Mexico; and that the same be sold at public sale to the highest bidder for cash, after notice having been first given by printed or written handbills, at least two weeks before the day of sale, posted in public places in the town of Franklin and San Elizario, Texas, and La Mesilla and Las Cruces, New Mexico, describing the property to be sold, and the time and place of sale; that a deed be made by said marshal of the real estate thus sold to the purchaser; and whereas publication has been duly made according to the provisions of said decree, as by certificate hereto annexed will fully appear, and whereas the same has been by me duly offered at public sale to the highest bidder, according to the provisions of the above decree, on the 19th day of December, A. D. 1865, at the public plaza of Franklin, Texas, and the said Nathan Webb having offered the sum of one hundred and ninety-three dollars and thirty-two cents, being the highest sum offered at said sale: Now, therefore, I, the said Abraham Cutler, marshal as
726 aforesaid for and in behalf of the said United States, in consideration of said sum of one hundred and ninety-three dollars and thirty-two cents, and by virtue of the power in me invested as such marshal by the statutes in such case made and provided, and by the decree of our district court as above set forth, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said Nathan Webb, his heirs and assigns, the said above-described premises, to have and to hold the same to him, the said Nathan Webb, his heirs and assigns, forever, to his and their use, benefit, and behoof.

In testimony whereof the said party of the first part, for and on the part of the United States, hath hereunto set his hand and seal the day and year first above written.

ABRAHAM CUTLER, [L. S.]
United States Marshal.

Witness: (Signed) N. P. BACON.

727 UNITED STATES, LIBELLANT,
vs.
THE PROPERTY OF CROSBY, HART, GILLETT & Gillett.

I hereby certify that I have posted notices of the sale two weeks

before the day of sale in public places in the towns of Franklin and San Elizario, Texas, and Los Cruces and La Mesilla, New Mexico, describing the property to be sold, and the time and place of sale, and in all other things conforming to the provisions of the decree in this case.

Franklin, Texas, December 18th, 1865.

(Signed) ABRAHAM CUTLER,
U. S. Marshal.

A true copy.

Filed for record, February 15th, 1866, at 10 o'clock a. m. Recorded this 16th day of February, A. D. 1866.

(Signed) HENRY WARREN,
Recorder E. P. C.

I certify that the foregoing is a true and correct copy from the records in my office taken from Book C, pages 64, 65, & 66.

[SEAL] H. B. AMITY,
Clk pro tem. E. P. C.

728 Filed in my office this 4th day of October, 1869.
W'M BREEDEN, *Clerk.*

United States marshal's deed.

This indenture, made and entered into this 19th day of December, in the year of our Lord one thousand eight hundred and sixty-five, by and between Abraham Cutler, marshal of the United States of America for the Territory of New Mexico, for and on behalf of the United States of America, and Nathan Webb, of the county of El Paso, Texas, witnesseth that, whereas a certain lot of land, situated in El Paso County, State of Texas, and bounded as follows, lot No. 31, in block No. 5, with house thereon, in the town of Franklin, El Paso County, State of Texas, has been seized by said marshal as the property of George H. Giddings, supposed to be in armed rebellion against the Government of the United States, and in all respects aiding and abetting said rebellion, and whereas, by the decree of our United States district court for the
729 third judicial district in said Territory, made and decreed after monition duly published, as follows:

"Third judicial district, Territory of New Mexico.

"The President of the United States of America to the marshal of the district of said Territory of New Mexico, greeting:

"Whereas a libel hath been filed in the third judicial district court of the said Territory of New Mexico, on the 23rd day of September, A. D. 1865, by Theodore D. Wheaton, esq'r, district attorney of the United States of America, against a certain tract of land or house and lot of land situated in the county of El Paso, State of Texas, and district aforesaid, described as follows: Lot No. 31, on block No. 5, with house thereon, in the town of Franklin, El Paso County, State of Texas, for reasons and causes in the said libel maintained, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said real estate may be cited in general and special to answer the premises, and all due proceedings
730 being had, that the said real estate may, for the causes in the said

libel mentioned, be condemned, and the proceeds thereof distributed according to law. You are, therefore, hereby commanded to attach the said real estate, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited, and the proceeds distributed according to the prayer of the said libel, that they be and appear before the said court *in* the first day of the next term, to be begun and held in and for the said district of the said Territory and county of Doña Ana, at the court-house of said county, on the sixth day of November, A. D. 1865, then and there to interpose a claim for the same, and make their allegations in that behalf, and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

731 "Witness the Hon. Joab Houghton, associate justice of the supreme court of the said Territory of New Mexico, and presiding judge of the third judical district court thereof, and the seal of said court, this 23rd day of September, 1865.

(Signed) "SAM. J. JONES, *Clerk.*"

It is ordered, adjudged, and decreed that the property described in the libel in said case, to wit, lot No. 31, in block No. 5, with house thereon, in the town of Franklin, El Paso County, State of Texas, be condemned as forfeited to the United States, and that the same be sold at the public plaza of the town of Franklin, in the county of El Paso, Texas, by the marshal of the United States for the district of New Mexico, at the public sale, to the higher bidder, for cash, after notice having been first given by printed or written hand-bills at least two weeks before the day of sale, pasted in public places in the town of Franklin and San Elizario, Texas, and La Mesilla and Las Cruces,

732 New Mexico, describing the property to be sold, and the time and place of sale. That a deed be made by the said marshal of the real estate thus sold to the purchaser. And whereas publication has been made according to the provisions of said decree, as by certificate hereto annexed will fully appear; and whereas the same has been by me duly offered at public sale to the highest bidder, according to the provisions of the above decree, on the 19th day of December, A. D. 1865, at the public plaza of Franklin, Texas, and the said Nathan Webb having offered the sum of fourteen hundred dollars and cents, being the highest bid and largest sum offered at said sale: Now, therefore, I, the said Abraham Cutler, marshal aforesaid, for and in behalf of the United States, in consideration of said sum of fourteen hundred dollars and cents, and by virtue of the power in me invested as such marshal by the statutes in such case made and provided, and by the decree of our district court as above set forth, have granted,

733 bargained, and sold, and by these presents do grant, bargain, sell, and convey unto the said Nathan Webb, his heirs and assigns, the said above-described premises: To have and to hold the same to him, the said Nathan Webb, his heirs and assigns, forever, to his and their use, benefit, and behoof.

In testimony whereof I, the said party of the first part, for and on the part of the United States, hath hereunto set his hand and seal the day and year first above written.

(Signed) ABRAHAM CUTLER, [SEAL.]
United States Marshal.

Witness: (Signed) N. P. BACON.

UNITED STATES, LIBELLANT,
vs.
THE PROPERTY OF GEORGE H. GIDDINGS.

I hereby certify that I have posted notices of the sale two weeks before the day of sale in public places in the towns of Franklin and San Elizario, Texas, and Las Cruces and La Mesilla, New Mexico, describing the property to be sold, and the time and place of sale, and in all
734 things conforming to the provisions of the decree in this case.

Franklin, Texas, December 18th, 1866.

(Signed) ABRAHAM CUTLER,
U. S. Marshal.

A true copy.

Filed for record February 15, 1866, at 10 o'clock a. m., and recorded this 15th day of February, 1866.

(Signed) HENRY WARREN,
Recorded El Paso Co.

I certify that the foregoing is a true and correct copy from the records in my office, taken from book C, pages 55, 56, and 57.

H. B. AMITY,
Clk Pro Tem. E. P. C.

Filed in my office this 4th day of Oct'ber, 1869.

W'M BREEDEN, *Clerk.*

And also on the hearing of the aforesaid motion, and in opposition thereto, the following answers and exhibits were read, to wit:

UNITED STATES OF AMERICA,
735 *Territory of New Mexico, County of Mora:*

District court of the first judicial district, county of Mora, March term, A. D. 1870.

W'M H. MOORE & W'M C. MITCHELL
vs.
GERTRUDE E. WEBB & JOAB HOUGHTON. } In chancery.—Cross-bill.

The seperate answer of Joab Houghton, one of the defendants, to the cross-bill of W'm H. Moore and W'm C. Mitchell versus Gertrude E. Webb and Joab Houghton.

This defendant, now and at all times hereafter, reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiencies in said cross-bill contained, for answer thereunto, or unto so much or such parts thereof as the defendant is advised is material for him to answer unto, answers and says:

That on the nineteenth day of October, A. D. 1866, this respondent,
736 without solicitation by himself, was appointed by the county judge of El Paso County, State of Texas, administrator pro tem. and custodian of the estate of Nathan Webb, deceased, who died intestate on the 15th day of October, A. D. 1866, at the county of El Paso aforesaid; that said appointment was strictly in accordance with the laws of the State of Texas as contained in Oldham's and White's Digest of the Laws of Texas, page 168, article 716, and justified under the

law by the reasons set forth in said letter of administration pro tem., (a true copy of which is herewith filed, and asked to be made a part of this answer, marked Exhibit A,) and also by the further reasons, first, that neither of the surviving partners, W'm H. Moore or W'm C. Mitchell, the complainants in this cross-bill, were present in El Paso County, Texas, at the time of the decease of the said Nathan Webb, nor was Gertrude E. Webb, the widow of the said deceased partner, to whom letters of administration of right belonged, there present at the time of his death, the said William H. Moore and the said Gertrude E.
737 Webb at that time being at Fort Union, in the Territory of New Mexico, and the said William C. Mitchell being in the city of St. Louis, State of Missouri, the first-named place being more than four hundred and fifty miles, and the latter more than sixteen hundred miles from the county of El Paso aforesaid. Respondent further says that at the time of the death of the said Nathan Webb, there was no person resident in the said county of El Paso legally entitled to letters of administration on the estate of the said Nathan Webb, or proper to be appointed custodian of the property of the firm of N. Webb & Co., with the exception of Henry J. Cuniffe, who, as partner in one branch of the business of the firm of N. Webb & Co., being half-owner in a flouring-mill, could very properly have been custodian of the whole property under appointment of the probate court, but said Henry J. Cuniffe refused the appointment, requesting that respondent should be appointed
738 administrator pro tem. of the estate of the said Nathan Webb, deceased, and custodian of the whole property of the said firm of N. Webb & Co., in El Paso County, Texas.

Respondent further says that the principal clerk of the said firm, at the establishment at Fort Bliss, Texas, at the time of the death of the said Nathan Webb, was one Henry Allen, who, respondent was advised, was not a sufficiently responsible person to be intrusted either with the custodianship of the property of the said firm, or control of the business, as subsequent events and information fully proved to respondent to be true. By the power and authority in him vested by the said letters of administrator pro tem., respondent took possession of the property of the estate of the said N. Webb, deceased, and the property of the firm of N. Webb & Co., in the county of El Paso, Texas, to hold and control the same, with the limitations in said letters prescribed, and therefore denies that he "unlawfully took possession," &c.,
739 as alleged in said cross-bill, but under full power and authority of law, and justified by all existing circumstances, as hereinbefore fully shown.

Respondent further says that immediately upon entering on the duties of administrator pro tem., on said estate, he wrote to the said William H. Moore, urging him to appear as surviving partner, and take the charge and custody of the property of the said firm of N. Webb & Co., and also to Gertrude E. Webb, widow of the said Nathan Webb, deceased, to appear and take out letters of administration on the estate of her deceased husband, which was her preferred right according to the laws of the State of Texas.

To all which respondent received no reply, either from the said William H. Moore or the said Gertrude E. Webb; but respondent is informed and believes that the said William H. Moore made sundry attempts to embarrass this respondent in the care and charge
740 of the said estate and the property of said firm of N. Webb & Co., by writing letters to persons in El Paso County, and especially to the said Henry Allen, ordering him to withhold or conceal the books,

papers, and property of the said firm of N. Webb & Co. from respondent, and not to acknowledge his authority as administrator pro tem., pretending and representing to the said Allen and others that it was neither lawful nor necessary that either the widow of the deceased partner, Nathan Webb, or any other person should take out letters of administration on the estate of the said deceased partner; that he, William H. Moore, without intervention of law, would take possession of the whole property, both of the said firm of N. Webb & Co. and of the estate of the said Nathan Webb, deceased, and without authority of law, but solely in his right as one of the surviving partners, settle and distribute the same to the widow and heirs of the deceased partner, as to him, Moore, should seem right; in all of which appeared to re-
741 spondent an evident intention to obtain the entire control, without authority of law, of the interests of the said deceased partner by the said Moore, for the purpose of defrauding the widow and heirs of the said deceased, and appropriating the whole proceeds of the said estate to himself, or to himself and the other surviving partner, William C. Mitchell.

Respondent further states that neither said William H. Moore or the said Gertrude E. Webb appeared at El Paso County, Texas, until the 9th day of December, 1866—more than two months after the death of the said Nathan Webb—thus leaving this respondent with the sole responsibility and control of the property of the said estate and of the said firm of N. Webb & Co., from the 19th day of October, 1866, the date of his letters of administration pro tem., up to the said 9th day of December, 1866, upon which said date the said William H. Moore, as surviving partner of the said firm of N. Webb & Co., attempted to unlawfully take possession of the whole of said property, and to con-
742 trol and manage the same as he had previously proposed, alike regardless of law and regardless of the existence of widow, heirs, or legal representatives of the deceased partner, the late Nathan Webb, or their rights, interest, and estate; but finding, in the attempt, that all the assets of the said firm and the said estate could not be controlled by him alone, and that such control could only be obtained by the cooperation of a legal representative of the estate of the said deceased partner, acting by authority of and under sanction of law, the said Moore requested the widow of the said deceased partner to take out letters of administration on the estate of her deceased husband, which was granted to her on the 17th day of December, 1866, with full power and authority to administer on the estate of her deceased husband, late a partner in the firm of N. Webb & Co., of El Paso, Texas, and William H. Moore & Co., Fort Union, New Mexico, a true copy of which letters of administration are filed with the original bill herein of Gertrude E. Webb versus William H. Moore and William C.
743 Mitchell, and prayed to be made a part of this answer.

Respondent makes the last foregoing statement by way of further answer to the allegation in said cross-bill contained, that this respondent, "under said letters of administration, unlawfully took possession of all the goods, wares, merchandise, books, and money of the said firm of N. Webb & Co., and continued (unlawfully?) to manage, &c."

On the 20th day of December, 1866, the said Gertrude E. Webb assumed the duties of administratrix of the estate of her deceased husband, Nathan Webb, and the letters of administration pro tem. granted to respondent on the 19th day of October, 1866, as aforesaid, became null by the limitation in the same expressed, and it only remained to respondent to present his statement of account of his administration to

the probate court or judge for settlement, allowance, and approval, which was accordingly done, and a true copy of the same is herewith presented, marked Exhibit B, and prayed to be made a part of this answer.

744 Respondent further states that on or about the 20th of December, 1866, a true copy of the account, with the exception of the allowance by the probate judge of the county of El Paso, to respondent for services as administrator pro tem. and custodian of the property of the said estate, was presented to the said William H. Moore, at the store-house of the said firm of N. Webb & Co., at Fort Bliss, Texas, by respondent in person; and that furthermore respondent, as administrator pro tem. and custodian, had caused a cash-book to be opened in the said store-house, at Fort Bliss, aforesaid, in which book was entered all cash on hand, and subsequently all cash received and all paid out under and during the administration and custodianship of this respondent from and to all persons whatsoever, which said cash-book respondent now supposes to be in the possession of the said William H. Moore and William C. Mitchell.

Respondent therefore says that the allegations contained in said cross-bill, in words following, to wit: "That Joab Haughton

745 took out of the money of the said firm of N. Webb & Co. the sum of $2,870, and goods to the amount of $29.18, making in all the sum of $2,899.18, and converted the same to his own use and wholly failed to account for the same to this respondent, W'm H. Moore and the said William C. Mitchell as surviving partners of the firm of N. Webb & Co., and also failed to account to the county court of El Paso, Texas, for said money and goods so taken, &c.," are utterly and unqualifiedly false, as stated in the cross-bill herein.

Respondent denies that he took any goods from the said firm of N. Webb & Co. as administrator to the amount of $29.18, or to any amount, but that the truth is, as will in part appear from the "statement of account" of respondent as administrator pro tem. herewith, marked Exhibit B, that this respondent as administrator pro tem. as aforesaid, applied the sum of $2,820.00 to the immediate requirements and liabilities of the estate of the said Nathan Webb, deceased, took vouchers for his disbursements thus made, and presented the same with

746 his said statement of account to the probate court of the county of El Paso as aforesaid; that the same was approved by the judge of said court and an allowance made to respondent as administrator pro tem. and custodian of the property of the said estate of Nathan Webb, deceased, of one thousand ($1,000,) dollars, for services rendered therein from October 20th to December 20th, 1866; and further, respondent saith the $29.18, amount in goods above mentioned, are chargeable to respondent's private account with the said N. Webb & Co., and not to his account as administrator pro tem., and that further the $504.50 balance in respondent's account as administrator pro tem., appearing to be due to the said firm of N. Webb & Co., (Exhibit B,) is more than cancelled and accounted for by an account and claim which respondent has against the said William H. Moore and William C. Mitchell as surviving partners of the late firm of N. Webb & Co., for services rendered and responsibility as custodian of the property

747 of said firm from the 20th of October to the 9th of December, 1866, of $600.00, which was not allowed to respondent by the probate judge when making his allowance as stated in Exhibit B, for services as administrator and custodian of the estate of Nathan Webb, deceased, only. Respondent therefore denies that he is indebted to the

said William H. Moore and W'm C. Mitchell, as their said cross-bill alledged, but that they, the said surviving partners, are, as to the account in said cross-bill stated, indebted to respondent in the sum of $95.50, and that therefore no decree should issue from this honorable court for the payment by this respondent to the said complainants of anything.

Respondent denies that the house and lots situated in El Paso County, Texas, now in the possession of the respondent and occupied by his lessee, "was purchased by the said Nathan Webb in his life-time, with the money of the said firm of N. Webb and Company," and that the said house and lot are known and designated on the plat of said
748 town of El Paso, as made by Anson Mills, as the Overland Mail Company lots and buildings. The truth is, that the said Nathan Webb, in his life-time, bid in the said house and lot, by understanding with respondent, for Ann C. Houghton, wife of respondent, the property to be deeded to the said Nathan Webb, but the purchase-money to be paid by respondent, and the property subsequently deeded to the said Ann C. Houghton. From neglect or other incidental causes the conveyance was not made in the life-time of the said Nathan Webb, and has not been made since, but that respondent took formal possession of the said house and lot for the said Ann C. Houghton on the 24th day of June, 1865, during the life-time of the said Nathan Webb, with his knowledge and at his instance and request, and that the deed for the same has been in possession of respondent since the month of October, 1866, since which time the said Ann C. Houghton has been in uninterrupted possession and occupancy either of herself or by lessee. Respondent avers that not one cent of the purchase-money was
749 paid by the said Nathan Webb, either from the money of the said firm of N. Webb & Co., or from his own, but that all that has been paid for the said property was paid by this respondent to the United States marshal about one month subsequent to the day of sale and conveyance of said house and lot, in December, 1865.

Respondent further saith that the said house and lot is known and designated on the plat of the town of El Paso, Texas, as made by Anson Mills, as lot No. 31, in block No. 5, and not as the Overland Mail Company lot and buildings. The said property was sold under decree of forfeiture and condemnation as the property of George H. Giddings, a rebel against the Government of the United States, on or about the 18th day of December, 1865, and purchased as aforesaid. The United States marshal's deed for the said property being at present in the hands of the agent of said Ann C. Houghton, in El Paso, Texas, respondent is unable to present a copy thereof herewith. Respondent denies
750 that he has in his possession any title-deeds of any "real estate, houses, and lots owned by the said Nathan Webb, at the time of his death, in the town of El Paso, Texas."

Respondent acknowledges that such deeds were in his possession during the time of his administration as administrator pro tem., but were delivered to the said William H. Moore, surviving partner, together with all other deeds, books, and papers belonging to the said firm of N. Webb & Co., in the month of December, 1866, since which date respondent has seen said deeds in the hands of Henry J. Cuniffe, the agent of said complainants, at the said town of El Paso, Texas.

All which matters and things this defendant is ready to aver and prove, as this court shall direct, and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

J. HOUGHTON.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Santa Fé:

I, Joab Houghton, swear that what is contained in this my
751 answer to the cross-bill herein, as far as concerns my own acts and deeds, is true to my own knowledge, and that what relates to the acts and deeds to other person or persons, I believe to be true.

J. HOUGHTON.

Subscribed and sworn to before me this 19th day of March, A. D. 1870.
[SEAL.] W'M BREEDEN, *Clerk*,
By M. A. BREEDEN, *Deputy Cl'k.*

Filed in open court this 28th day of March, 1870.
W'M BREEDEN, *Clerk.*

(EXHIBIT A.)

OFFICE OF COUNTY JUDGE EL PASO COUNTY, TEXAS,
Oct. 19, 1866.

Whereas it has come to my knowledge that Nathan Webb, late a resident of said county, died intestate on Sunday at said county, possessed of a large estate in real and personal property; and whereas it appears to me that the interest of said estate requires the appointment of an administrator pro tem. for the custodianship, safe keeping, security, and management of said estate until the final appointment of
752 an administrator with full powers to settle up said estate; and it further appearing to me that the honorable Joab Houghton, a brother-in-law of the said deceased, is a suitable person for such custodian: Therefore be it known that I, Albert H. French, county judge of said county, do hereby appoint the said Joab Houghton administrator pro tem. and custodian of said estate; said appointment to continue in force under the provisions of the law of said State and subject to the further orders of this court herein.

Given under my hand and the seal of said court this 19th day of October, A. D. 1866.

(Signed) A. H. FRENCH,
County Judge.

Attest:

J. M. LUJAN,
Clerk County Court E. P. C.

Filed in open court this 28th day of March, 1870.
W'M BREEDEN, *Clerk.*

753 (Copy.)

J. Houghton, adm'r pro tem., in a\c. with the estate of N. Webb, deceased.

1866.		DR.
Oct. 20.	To cash to self	2,000 00
" 24.	" " " "	200 00
" 30.	" " for Amity	100 00
Nov. 1.	" self	100 00
" 4.	" "	100 00
" 22.	" " Dr. Christian	200 00
" "	" self	120 00
		$2,820 00

1866.		SUPRA.	CR.
Oct. 20.	By cash to	W. P. Bacon	1,000 00
" 30.	do.	H. B. Amity	100 00
Nov. 16.	do.	A. M. Hunt	10 50
" 22.	do.	J. M. Lujan, probate cl'k	5 00
" 22.	do.	Dr. Christian	200 00
			$1,315 50
		Bal. favor of estate	$1,504 50
		Allowed by probate court for services as adm'r pro tem. and custodian of property of the estate from Oct. 20th, 1866, to December 20th, 1866	$1,000 00
			504 50

STATE OF TEXAS,
El Paso County, ss:

Before me, the undersigned judge of the probate court, personally appeared Joab Houghton, adm'r pro tem. of the estate of N. Webb, deceased, and made oath, and says that the above statement of account is correct, and that the services of administrator pro tem. and custodian of property were performed.

754

J. HOUGHTON.

Sworn and subscribed before me this fourth day of December, A. D. 1867.

(Signed) A. H. FRENCH,
Probate Judge E. P. C.

Approved.

A. H. FRENCH,
Probate Judge El Paso County, Texas.

Filed in open court this 28th day of March, 1870.
W'M BREEDEN, *Clerk.*

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

District court of the 1st judicial district, county of Mora, March term, 1870.

WILLIAM H. MOORE & WILLIAM C. MITCHELL
vs.
755 GERTRUDE E. WEBB & JOAB HOUGHTON.

The seperate answer of David L. Huntington and Gertrude E. Huntington, late Gertrude E. Webb, defendants to the cross-bill of William H. Moore and William C. Mitchell versus Gertrude E. Webb and Joab Houghton.

These defendants, now and at all times hereafter reserving all manner of benefit and advantage to themselves of exceptions to the many errors and insufficiencies in said cross-bill contained, for answer there-

unto, or unto so much or such parts thereof as these defendants are advised is material for them to answer unto, answering, say:

That they deny that, in consequence of bad management and losses attending the business of the late firm of N. Webb & Co., in the county of El Paso, Texas, that the surviving partners failed to have available assets of said firm sufficient to pay the debts of the said branch of the general concerns of N. Webb & Co. in El Paso, and W. H. Moore
756 & Co., Fort Union, New Mexico, of which said firms the said N. Webb, deceased, was an equal partner with the said William H. Moore and William C. Mitchell; but these respondents state the truth to be, as they are informed and believe, that, for a long time previous to, and at the time of, the death of the said Nathan Webb, the said partner in the said firms, there were ample assets of the said firm of N. Webb & Co. in El Paso County, Texas, consisting of money, credits, and goods, wares, and merchandise, to much more than pay all liabilities of said branch firm; but that, by the culpable neglect or fraudulent practices in regard to the business of said firm of N. Webb & Co., both previous and subsequent to the death of the said Nathan Webb, of the said William H. Moore, one of the surviving partners, the said assets, consisting of goods, wares, and merchandize, after the death of the said Nathan Webb, were suffered to become damaged and deteriorated in value, or wasted and squandered for want of care, and, so far as said assets consisted of credits and debts due the said firm, no proper
757 diligence was used by the said William H. Moore, his agents or attornies, to collect or realize the same, and in consequence of such delay, neglect, and want of diligence, the estate of the said Nathan Webb has suffered great and irreparable loss, which ought to be chearg'able to the said surviving partners, William H. Moore and William C. Mitchell, and not to the estate of the said Nathan Webb, deceased, or to the said firm of N. Webb & Co.

Not having access at this time to the books of account kept by the said surviving partners of and on account of the said firm of N. Webb & Co. and W. H. Moore & Co., these defendants are not able of their own knowledge to state whether the moneys derived from the assets of the said firm of N. Webb & Co., have been accounted for, credited, or properly appropriated or applied or not, though these defendants are informed and believe that large sums of money have been received by the said William H. Moore and William C. Mitchell from said
758 assets, which have not been properly credited to the account of said firm of N. Webb & Co., or otherwise properly accounted for.

Defendants deny that the late firm of N. Webb & Co. is indebted to said firm of W. H. Moore & Co. or to William H. Moore and William C. Mitchell, surviving partners of said firms, as alledged in said cross-bill. Defendants deny that any necessity exists for the placing of any real estate belonging either to the estate of the late Nathan Webb, deceased, or to the late firm of N. Webb & Co., into the hands of the said surviving partners as assets for the liquidation of any debts of the said late firm of N. Webb & Co.

Defendants deny that any deeds of any real estate belonging to the said firm, or belonging to the said Nathan Webb in his life-time, are in the possession of the said Gertrude E. Webb.

Defendants further say that the sum of $500 was paid to one John S. Watts by the said Nathan Webb, deceased, in his life-time, but
759 with the express understanding, on the part of the said Nathan Webb, deceased, and so declared by him at the time of the said payment, that the said John S. Watts was to give a deed for the said

lot, designated as lot 109 in block No. 24, in the town of El Paso, Texas, to the said Gertrude E. Webb, which the said Watts neglected and failed to do until November 3rd, 1866, subsequent to the death of the said Nathan Webb, as will appear from a true copy of the deed herewith filed and marked Exhibit "A." The defendant, the said Gertrude E. Webb, now Huntington, is informed and believes that the said real estate is her property in her own right, according to the laws of the State of Texas.

Defendants are not advised whether the $500 paid the said John S. Watts for the said lot of land was the money of the said Nathan Webb, deceased, or the money of the said firm of N. Webb & Co.

Defendants acknowledge that, on account of their indebtedness to the said firms of N. Webb & Co., James Zabriskie and wife, Al-
760 bert H. French and wife, and Leonora Percy, widow of Frederick A. Percy, deceased, and, in payment of said indebtedness, did executed deeds for their undivided sixth part in a certain tract of land situate in the county of Doña Ana and Territory of New Mexico; but defendants deny that the insertion of the name of the said Elizebeth Webb, meaning Gertrude Elizebeth Webb, was a mistake in the execution of said deeds, as in said cross-bill alleged, making her, the said Gertrude Elizebeth Webb, "one of the parties to whom said titles were executed," because defendants say that Gertrude Elizebeth Webb, who was intended by Elizebeth Webb, is the widow, heir, and administratrix of the estate of Nathan Webb, deceased, who was an equal partner with the said William H. Moore and William C. Mitchell in the said firms of N. Webb & Co., El Paso, Texas, and W. H. Moore & Co., Fort Union, New Mexico; and, as the heir and administratrix of the said deceased partner, she is legally an equal party in interest
761 with the said William H. Moore and William C. Mitchell in the lands conveyed by the said title-deeds.

Defendants deny the allegation in said cross-bill contained that the said Gertrude E. Webb and the said Nathan Webb, at the time of their marriage, "had no property of any kind except their wearing apparel," but state the truth to be that the said Nathan Webb, at the time of the said marriage with the said Gertrude E. Webb, was possessed of a large interest in the said firm of W. H. Moore & Co., as defendants are informed and believe.

These defendants admit that the said Nathan Webb died intestate, "without will or descendants," in the State of Texas, county of El Paso; that his residence and part of his estate were in said county and State when he died, and that in said county and State letters of administration were granted to the said Gertrude E. Webb, the widow and heir of the said Nathan Webb, deceased, who was
762 full and equal partner with the said William H. Moore and William C. Mitchell in the said firms of N. Webb & Co., El Paso, Texas, and of the firm of W. H. Moore & Co., Fort Union, New Mexico, to administer on the estate of her said deceased husband.

These defendants also admit that, in accordance with the laws of Texas, all the property, personal, of her deceased husband descended to her, the said Gertrude E. Webb, his widow, and that one-half of the real estate of which the said Nathan Webb died possessed, situate in the State of Texas, descended half to his said widow and half to the only surviving parent of the deceased; but defendants deny that any different rule of law applies to the inheritances or distribution of either the real or personal estate, of which the said Nathan died possessed, in the Terri-

tory of New Mexico. Defendants are informed and believe that the laws of the State in which the deceased had residence and estate at the time of his death, and where he died intestate, govern in the settlement and distribution of the estate in whatever other State or
763 Territory other portions of said estate may be found.

In regard to all the in'uend'os and insinuations in said cross-bill contained, respecting the rights of one Sarah Webb, only surviving parent of the said Nathan Webb, deceased, to one-half of the real estate, of which the said Nathan Webb died possessed, defendants state that the said Gertrude E. Webb, as administratrix of the estate of the said deceased, has duly filed and recorded her oath in the probate court for the county of El Paso aforesaid to administer and distribute the estate of the said Nathan Webb, deceased, according to the laws of the State of Texas, and that she would have long since so administered and distributed said estate, but for the unlawful and fraudulent hindrances and delays caused by the said William H. Moore and the said William C. Mitchell, the surviving partners aforesaid. All the property of the said estate of Nathan Webb, deceased, being in the hands of the said surviving partners, William H. Moore and William C. Mitchell, they, the said surviving partners, have by false and fraudulent
764 practices, denied to the said defendant, Gertrude E. Webb, a settlement and division of interests of the said copartnerships of N. Webb & Co., El Paso, Texas, and W. H. Moore & Co., Fort Union, New Mexico, and have compelled her to sue in this honorable court of chancery for a decree to compel such settlement.

As to the several sums in said cross-bill mentioned as having been drawn by the said Nathan Webb during his life-time and for his own personal use from the said firm of N. Webb & Co., W. H. Moore & Co., and Moore, Adams & Co., defendants, not being sufficiently informed in the premises, neither admit or deny, but say that they are informed and believe that the larger portion of said sums of money are not justly charg'able to the personal account of the said Nathan Webb, deceased.

Respecting the sum of $11,044.10 alleged in said cross-bill to have been received by the said defendant, Gertrude E. Webb, from the said firm of N. Webb & Co., at El Paso, and $5,211.98 in said bill al-
765 leged to have been received by her from the said firm of W. H. Moore & Co., at Fort Union, New Mexico, defendants says that but a small portion of said amounts were received by her, and that such portions as she has received are justly allowable to her by law as administratrix and heir of the estate of the said Nathan Webb, deceased, and not charg'able to her personal account, except in a final settlement of the said estate. Respecting the said sum of $2,899.18 in said cross-bill alleged not to have been accounted for by Joab Houghton, administrator pro tem. and custodian of the said estate of said Nathan Webb, deceased, defendants say that they are informed and believe that the said Joab Houghton, administrator pro tem. aforesaid, accounted for the said sum of money to the probate court of the county of El Paso, Texas, and also to the said William H. Moore, surviving partner, &c.

Having now answered all the allegations in said cross-bill contained, or such parts thereof as these defendants are advised it is ma-
766 terial for them to answer unto, and as all the matters and things which are set forth in this answer these defendants are ready to aver and prove as the court shall direct, they pray to be hence dis-

missed with their reasonable costs and charges in this behalf most wrongfully sustained.

DAVID L. HUNTINGTON,
GERTRUDE E. HUNTINGTON,
Late Gertrude E. Webb,
By ELKINS, WHEATON & HOUGHTON,
Attorneys.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

This day personally appeared before the undersigned, clerk of the district court of the United States in and for the eastern district of Missouri, David L. Huntington and Gertrude E. Huntington his wife, defendants to the cross-bill of complainants herein, who, being duly sworn on their oaths each, state that the matters and things set forth and contained in the foregoing answer those stated on their information are true and those stated on the information of others they believe to be true.

DAVID L. HUNTINGTON.
GERTRUDE E. HUNTINGTON.

767 Sworn to and subscribed before me, as clerk of the district court of the United States for the eastern district of Missouri, this twenty-first day of April, A. D. 1870.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court, at office in the city of St. Louis, in said district, the day and year last above written.

[SEAL.] BEN. F. HICKMAN,
Clerk of said District Court.

[5 c'ts int. rev. stamp, cancelled.]

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Samuel Treat, sole judge of the district court of the United States for the eastern district of Missouri, do hereby certify, as such judge, that Benjamin F. Hickman, whose certi'cate is hereinbefore given, is and was at the date of such certificate clerk of said district court, and that his signature thereto is genuine and in due form of law, and that full faith and credit should be given to all of his official acts as
768 such clerk.

Given under my hand at St. Louis, in said district, this 21st day of April, A. D. 1870.

SAMUEL TREAT,
Judge of said District Court.

[Int. rev. stamp, 5 c'ts, cancelled.]

Filed in my office this 9th day of May, 1870.
W'M BREEDEN, *Clerk.*

EXHIBIT "A."

STATE OF TEXAS,
County of El Paso:

Know all men by these presents that I, John S. Watts, for and in consideration of the sum of five hundred dollars, the receipt whereof is

hereby acknowledged, have bargained, sold, released, and conveyed, and by these presents do bargain, sell, release, and convey unto Gertrude E. Webb, her heirs and assigns, forever, the following-described property, to wit, a certain house and lot, lying and being situated in the town of El Paso, in the county of El Paso, and State of Texas, and known as lot No. 109, in block No. 24; together with all and
769 singular the rights, tenements, and appurtenances thereunto belonging.

To have and to hold all and singular the premises above mentioned unto the said Gertrude E. Webb, her heirs and assigns, forever. And I do bind myself, my heirs, executors, and administrators and assigns to warrant and defend unto the said Gertrude E. Webb, her heirs, executors, administrators, and assigns the title to the above-described property in fee-simple, forever.

Given under my hand and seal this 5th day of November, 1866.

(Signed) JOHN S. WATTS.

Witness:
WARD B. BLANCHARD.
J. M. LUJAN.

[Rev. stamps, 50c.]

STATE OF TEXAS,
County of El Paso:

Before me, J. M. Lujan, clerk of the aforesaid county and State, personally appeared John S. Watts, to me well known, who acknowledged that he signed the foregoing instrument of writing for the purposes and considerations therein expressed.

770 In testimony whereof I hereunto sign my name and affix my official seal, at office, this 15th day of November, A. D. 1866.

(Signed) J. M. LUJAN,
Clerk County Court E. P. C.

STATE OF TEXAS,
County of El Paso:

I, J. M. Lujan, clerk of the county court of the aforesaid county and State, do hereby certify that the foregoing instrument of writing is by me recorded in the records of the county, in book "C," pages 281 & 282.

Witness my hand and official seal this 15th day of November, A. D. 1866.

J. M. LUJAN,
Clerk County Court E. P. C.

Filed in my office this 29th day of March, 1870.
W'M BREEDEN, *Clerk.*

And be it further remembered that, on Tuesday, the 16th day of August, A. D. 1870, being the second day of the August, A. D. 1870,
771 term of the United States district court for the 1st judicial district of the Territory of New Mexico, in and for the county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &c., & David L. Huntington
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now come the said defendants, by their counsel, and move the court to grant them thirty days in which to file exceptions to the report of the master in chancery filed in this cause; which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTINGTON
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

The said *said* defendants W'm H. Moore and William C. Mitchell, by their attorn*ies*, move the court for thirty days' time from 13th day of August, 1870, in which to file exceptions to the report of the master in chancery herein.

BENEDICT, CLEVER & WATTS,
For Def'ts.

772 On which said motion is the following endorsement, to wit:

Gertrude E. Huntington & David L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Chancery. Motion for time to file exceptions to report of master in chancery. Filed in open court this 16th day of August, 1870. W'm Breeden, clerk. Benedict, Clever & Watts for def'ts.

And the same being argued by counsel, and the court, being sufficiently advised in the premises, overrules said motion without prejudice; to which ruling of the court the defendants, by their counsel, except.

And afterwards, to wit, on Tuesday, the 16th day of August, A. D. 1870, being the second day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

773 GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now come the said complainants by their counsel, and move the court that an order be made closing the proofs in this cause, which said motion is in the words and figures following, to wit:

In chancery. District court, county of Mora, Aug. term, A. D. 1870.

GERTRUDE E. HUNTINGTON, ADM'X &c., & David L. Huntington
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

The complainants by their solicitors move the court that an order be made closing the proofs in the above-entitled cause.

T. D. WHEATON & S. B. ELKINS,
Sol's for Comp's.

On which said motion is the following endorsement, to wit:

774 Gertrude E. Huntington, adm'x, &c., & D. L. Huntington vs. William H. Moore & William C. Mitchell. Motion filed in my office this 15th day of August, 1870. W'm Breeden, clerk.

And the same being argued by counsel, and the court not being sufficiently advised in the premises, takes said motion under advisement.

And afterwards, on Tuesday, the 16th day of August, A. D. 1870, being the second day of the August, A. D. 1870, term of the said district court for said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &c., & David L. Huntington, her husband, *vs.* W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now come the said defendants by their counsel, and move the court to consolidate with this suit the suit commenced by the cross-bill of the said defendants against Gertrude E. Webb and Joab Hough-
775 ton, which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington *vs.* W'M H. MOORE & WILLIAM C. MITCHELL.

And now come the said defendants by Benedict, Clever and Watts, their attornies, and move the court for an order, joining and consolidating the cross-bill of W'm H. Moore & William C. Mitchell against Gertrude E. Webb and Joab Houghton with the original bill of Gertrude E. Webb against said William H. Moore and William C. Mitchell as surviving partners of the firm of W'm H. Moore & Co., and that in future said original bill and cross-bill be considered and proceeded in together as one cause.

BENEDICT, CLEVER & WATTS,
For Defendants.

On which said motion is the following endorsement, to wit:

776 Gertrude E. Webb & David L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Chancery. Motion to consolidate bill and cross-bill. Filed in open court this 16th day of August, 1870. W'm Breeden, clerk. Benedict, Clever & Watts, solicitors for def'ts.

And the same being argued by counsel, and the court, not being sufficiently advised in the premises, takes said motion under advisement.

And afterwards, to wit, on Wednesday, the 17th day of August, A.

D. 1870, being the third day of the August, A. D. 1870, term of said district court for said county of Mora, the following proceedings were had, which said proceedings are as follows, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &c., & DAVID L. Huntington
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

This motion to consolidate with this suit the suit commenced by the cross-bill of the said defendants against the said Gertrude E. Webb and Joab Houghton, having been argued and submitted on a former day of this term, and the court having then taken said motion
777 under advisement, and being now sufficiently advised in the premises, overrules said motion.

And afterwards, to wit, on Wednesday, the 17th day of August, A. D. 1870, being the third day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'R, &C., & DAVID L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

Now came on to be heard the motion of the said defendants for an order upon said complainants, requiring them to make Sarah Webb a party to this cause, and for a stay of proceedings in this cause until all the parties in interest as heirs or distributees of the estate of Nathan Webb, deceased, are properly before the court as parties, which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. Huntington
778 *vs.*
W'M H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now comes the said defendants by Benedict, Clever & Watts, their attorneys, and it appearing by the evidence in this case, that Sarah Webb, mother of Nathan Webb, deceased, was living at Burlington, Iowa, at the death of Nathan Webb, and it further appearing said Nathan Webb, at his death, left no children him surviving, and that said Sarah Webb, as such mother under and by virtue of the laws of New Mexico, has an interest in the estate of her deceased son Nathan Webb, said defendants now move the court for an order upon said complainants, requiring them, within such reasonable time as the court may direct, to make the said Sarah Webb a party in this case, and that the proceedings upon said bill as to the final decree be stayed herein, until all the parties in interest as heirs or distributees of the estate of Nathan Webb, deceased, are properly before the court as parties.

BENEDICT, CLEVER & WATTS,
For Def'ts.

779 On which said motion is the following endorsement, to wit:

Gertrude E. Huntington & David L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Motion to stay proceedings until Sarah Webb is made a party. Filed in open court this 16th day of August, 1870. W'm Breeden, clerk. Benedict, Clever & Watts for defts.

Which motion being argued by counsel and the court being sufficiently advised in the premises, overrules said motion.

And afterwards, to wit, on Wednesday, the 17th day of August, A. D. 1870, being the third day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & DAVID L. Huntington, her husband, *vs.* WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

780

The motion of the said complainants, by their counsel, for an order closing the proofs in this cause, having been argued and submitted on a former day of this term, and the court having then taken said motion under advisement, and being now sufficiently advised in the premises, sustains said motion, and it is ordered that the proofs in this cause be, and hereby are, closed.

And be it remembered that, on the 17th day of August, A. D. 1870, the following petition for allowance was filed by the master in chancery, which said petition is in the words and figures following, to wit:

First judicial district court, Territory of New Mexico. In chancery

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington, her husband, *vs.* W'M H. MOORE & W'M C. MITCHELL. } In chancery.

The undersigned master in chancery, to whom certain matters
781 in this cause were referred, under and by virtue of a certain decree of this court, made in this cause, on the 29th day of March, A. D. 1870, respectfully represents to the court that I entered upon the performance of my duties under the provisions of said decree, and was thereafter engaged upon the matters referred to in said cause until the 13th inst., when I completed the same by filing in the office of the clerk and register of this court my report upon said matters, in accordance with the directions of said decree, and now pray that the court will make me such allowance for my services and those of my assistant, the accountant employed under the authority of said decree, as to the court shall seem reasonable and just under the circumstances. I have also to inform the court that I have necessarily expended the sum of twenty dollars for the transportation of books used on said reference.

All of which is most respectfully submitted.

Mora, N. M., August 16, 1870.

W'M BREEDEN,
Master in Chancery.

782 The undersigned solicitors for complainants, agree to an allowance of one thousand dollars to the master for services rendered, as stated, in the foregoing petition, as also the sum of two hundred and fifty dollars to the accountant employed by the master.

TH'E D. WHEATON,
S. B. ELKINS,
Sol's for Comp.

On which said petition is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Master's petition for allowance. Filed in open court this 17th day of August, 1870. W'm Breeden, clerk.

And afterwards to wit, on Wednesday, the 17th day of August, A. D. 1870, being the third day of the August, A. D. 1870, term of the said district court for said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

783 GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington, her husband, *vs.* WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

Upon reading and filing the petition of William Breeden, a master of this court, praying that a reasonable and proper allowance be made to him for his services and those of his assistant, the accountant employed by him in the accounting in this cause, and on reading the written stipulation of the solicitors for the complainants annexed to said petition, consenting that the sum of one thousand two hundred and fifty dollars be allowed to the said master for his services, and those of the accountant employed by him upon such accounting, and the defendants' counsel assenting to the propriety of the amount of such allowance, it is therefore ordered and decreed that the said master, William Breeden, be allowed the said sum of one thousand two hundred and fifty dollars for his services and those of the accountant employed by him upon
784 the accounting in this cause, and that the said defendants William H. Moore and William C. Mitchell pay to the said master, William Breeden, the said sum of one thousand two hundred and fifty dollars within four days, and that they also pay to the said master the sum of twenty dollars for disbursements made by him.

And heretofore, to wit, on the 16th day of August, A. D. 1870, the following motion was filed, which said motion is in the words and figures following, to wit:

In chancery.—Dist. court, county of Mora, Aug. term, A. D. 1870.

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington, *vs.* WILLIAM H. MOORE & WILLIAM C. MITCHELL.

The complainants, by their solicitors, move the court to confi'm the master's report made in the above-entitled cause.

T. D. WHEATON &
S. B. ELKINS,
For Complainants.

On which said motion is the following endorsement, to wit:

785 G. E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Motion. Filed in my office this 16th day of August, 1870. W'm Breeden, clerk.

And afterwards, to wit, on Wednesday the 17th day of August, A. D. 1870, being the third day of the August, A. D. 1870, term of the said district court, for the said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now come the said defendants, by their counsel, and move the court to permit them to file objections to the master's report in this cause, for reasons stated in affidavits filed with said motion, which said motion and affidavits are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington,
786 *vs.*
W'M H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now comes the said defendants, W'm H. Moore and William C. Mitchell, by their attorneys, Benedict, Clever and Watts, and with leave of the court now ask that the said defendants be permitted to file objections to the report of the master in chancery, filed herein on the 13th day of August, 1870. And in support of said motion the said defendants file the petition of W'm H. Moore upon the report of the said defendants, and the affidavit of John S. Watts, Kirby Benedict, and C. P. Clever in support also of said motion.

BENEDICT, CLEVER & WATTS,
Atty's for Def'ts.

On which said motion is the following endorsement, to wit:

Gertrude E. Huntington & David L. Huntington vs. W'm H. Moore & William C. Mitchell. Chancery. Motion for leave to file exceptions to the master's report before the master. Filed in open court
787 this 17th day of August, 1870. W'm Breeden, clerk. Benedict, Clever & Watts, for def'ts.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

To the Hon. Joseph G. Palen, chief justice of the supreme court of the Territory of New Mexico, and judge presiding in the first judicial district, in and for Mora County, New Mexico, for the hearing of causes arising under the laws of the Territory of New Mexico.

Your petitioners, William H. Moore and William C. Mitchell, the former residing at Fort Union, Mora County, New Mexico, and the latter a resident of St. Louis, in the State of Missouri, would respectfully state to the court that they are defendants in a suit in chancery now pending in said Mora district court, in which Gertrude E. Huntington and

David L. Huntington are complainants, and the said William H. Moore and William C. Mitchell are defendants, as surviving partners of
788 the firm of N. Webb & Co., Moore, Adams & Co., and William H. Moore & Co. Said petitioners would further state that the subject-matter of the suit was to ascertain and fix the interest of the estate of Nathan Webb, deceased, in the said business of said firms, and whether or not said interest had been fully paid and satisfied to the said Nathan Webb in his life-time, or to his legal representatives since his death.

Your petitioners would further state that said original bill of complaint, with the seperate answer of the said W'm H. Moore and W'm C. Mitchell to the same, with the exhibits referred to in said bill and answers, were filed, and at the time of filing the said answers, the said W'm H. Moore and William C. Mitchell, they filed their cross-bill in support of said answers, making the said Gertrude E. Webb, now Huntington, and Joab Houghton, former custodian and administrator, pro tem., of the estate of Nathan Webb, deceased, defendants, asking for discovery, cancellation of deeds, obtained by Gertrude E. Webb, from John S. Watts, James A. Zabriskie and wife, and Albert H. French and
789 wife, upon the ground that the estate of Nathan Webb could not hold title to said real estate, as the said real estate was purchased with the partnership funds of N. Webb & Co.; and as said firm of N. Webb & Co. was insolvent, the said real estate was asked to be made assets in the hands of said W'm H. Moore and William C. Mitchell for the liquidation of the unpaid debts of said firm of N. Webb & Co. due and owing to W'm H. Moore and Company.

Said petitioners would further state that the said Joab Houghton appeared and filed his answer to said cause, and the said Gertrude E. Huntington presented her answer to said cross-bill, but on account of informality in the authentication of said answer of said Gertrude E. Huntington to said cross-bill, time was given for forty days after the last term of said Mora court to file said answer, at the end of which time the said answer of the said Gertrude E. Huntington to said cross-bill was filed. Your petitioners would further state that, at the last term of said district court, an order was entered upon the records of
790 said court referring said original bill and exhibits, and the seperate answers of W'm H. Moore and William C. Mitchell, and exhibits, to W'm Breeden, master in chancery, for examination of the books of said firms, the taking of the testimony in the cause, the stating of an account, and reporting the same to the court. Your petitioners would further state that said W'm Breeden, master in chancery, gave notice that he would proceed to the examination of the books and taking evidence in said cause on the 16th day of May, 1870.

Your petitioners would further state that both parties continued taking of testimony until the 25th of July, 1870; and until the evidence of the complainant was all taken in support of her bill it was impossible to determine by the said petitioners what testimony was required to support the answer of said W'm H. Moore and William C. Mitchell, until all the evidence upon the part of said complainant was fully taken by said complainants, and due notice of having closed said evidence
791 by the complainant was given to the defendants.

Your petitioners would further state that said petitioners were not notified to attend the hearing of said cause before the master until the 8th day of August, 1870, and the time and place of hearing was fixed at Las Vegas, San Miguel County, New Mexico, at 4 o'clock p. m. on Friday, the 12th of August, A. D. 1870, all of which will more fully

appear by reference to the said copy of said notice, hereby made a part of this petition, marked as Exhibit (O,) herein. Your petitioners would further state that immediately on notice being given, the said W'm H. Moore sent a telegram to his attorney, John S. Watts, and that of his co-defendant, to return to New Mexico by the 12th of August, 1870, as court at Mora would be held August 15th, 1870, at Mora, and the said defendants are informed and believe that on the day after the reception of said telegram, the said John S. Watts, their attorney, left Washington City, distant two thousand miles from Las Vegas, but by reason of missing connection on railroad trains and the heaviness of the roads between Kit Carson, Colorado Territory, and Las Vegas, a
792 distance of near three hundred miles, prevented his said attorney from being present before the master in chancery at Las Vegas, on the said 12th day of August, 1870, as required by said notice, but did arrive on the morning of August 15th, 1870, at 5 o'clock a. m., and was present at Mora before the opening of court on the said 15th day of August, 1870.

Your petitioner would state that he is informed and believes that it has been the universal practice of courts of chancery, in the Territory of New Mexico, not to appear and file exceptions to the report of the master in chancery during the pendency of said report before said master in chancery, but is said report is exceptionable after the same has been filed, time has been given by the court to file exceptions to the report of the master in chancery, in accordance with the 83d rule of the Supreme Court of the United States, which rule has been adopted by the supreme court of the Territory of New Mexico, under the authority conferred upon the supreme court of the Territory of New Mexico,
793 by act of the legislative assembly of the Territory of New Mexico, approved February 2d, 1859, page 102, and section' 6, 7, & 8, of the compiled laws of New Mexico, and under the above state of facts the said petitioners employed additional counsel in the said cause, and after due consultation of said counsel, an application for further time to file exceptions to said report of said master in chancery on account of the shortness of time, the importance of the cause, and the time allowed for purposes of exception by the rules of the supreme court, and on account of the occupation of said attorn*ies* in the daily attendance upon court and the trial of causes, it became mentally and physically impossible for said attornies to file said exceptions at the time specified in said notice of said master in chancery; all of which facts will more fully appear by reference to a copy of said application for further time, hereby made a part of this petition, and marked as Exhibit (P,) herein.

Your petitioners would further state that said master in chan-
794 cery refused said application for further time to file exceptions to said report of said master in chancery. Your petitioner would further state that since the making of said report of said master in chancery, and the delivery to said defendants' attorney, C. P. Clever, of a copy of said report of said master in chancery, on the 8th of August, 1870, and since then, to wit, on the 16th day of August, A. D. 1870, the said William Breeden made an amendment of said copy of said report, in these words, to wit: "The complainant charges that Nathan Webb furnished to W'm H. Moore & Co. $15,000 when he entered the firm. This claim is not sustained by the proof, and is disallowed." Your petitioners would further state said amendment to said report was not known to the said W'm H. Moore and W'm C. Mitchell, nor to their attorn*ies*, until the said amendment was, on the said 16th day of August, 1870, by the master in chancery called to the attention of the at-

torn*ies* of said W'm H. Moore and William C. Mitchell, and then
795 entered on the margin of said report of said master in chancery, as will more fully appear by reference to the said copy of said report, now produced for inspection, and by the statements of said master in chancery in open court, as to said amendment of said report.

Your petitioners would further state that the amendment of said report of said master in chancery, of which no notice was had until the 16th day of August, A. D. 1870, ought to entitle said defendants, W'm H. Moore and W'm C. Mitchell, to a reasonable time to file now before the said master in chancery, exceptions to said amended report, in order that they be considered and disposed of by the said master in chancery, subject to the review of the court after said exceptions have been passed upon by the master in chancery, and referred to the court with the action of said master in chancery upon said exceptions.

Your petitioners, the said W'm H. Moore and William C. Mitchell, would further state that said cause does not arise under the laws
796 of the United States, but under the laws of the Territory of New Mexico, passed on the 12th of July, 1851, for the regulation of the procedure and practice in civil causes, in which act it was provided in sect. 5, page 192, of the compiled laws of New Mexico, that the distinction between chancery and common-law rules and practice was repealed and abolished.

Your petitioners would further state that in conformity with an act of the legislative assembly of New Mexico, approved February 2, 1859, the supreme court of the Territory of New Mexico were authorized to make rules and regulations for procedure and practice in the supreme and the district courts of the Territory of New Mexico, not inconsistent with the laws of the Territory of New Mexico. (See Compiled Laws, page 102, sect. 6, 7, & 8.)

Your petitioners would further state that said supreme court did adopt the rules of the Supreme Court of the United States, under which rules one month is allowed after the filing of the report of the
797 master in chancery in which to file exceptions to said report of the master in chancery, and have the same passed upon by the court, and nowhere in said rules is it made binding on either party to appear before the master in chancery and file exceptions to his report or draft report, under the penalty of being refused the right and privilege of filing exceptions to the report of said master in chancery, after the same has been filed in court.

Your petitioners would further state that if the permission is given them to now file exceptions to the report of the master in chancery, they will at once and within such time as the court or master in chancery may indicate, file their exceptions to the report of the master in chancery for his action and the action of the court thereon.

Your petitioners further state that they desire to file exceptions to the report of the master in chancery filed herein, among others, upon the following points:

1st. The correction of the error in the master in chancery finding the interest of Nathan Webb in the firm of W. H. Moore & Co. at
798 one-third instead of one-eighth, as will appear by the evidence taken before said master.

2d. The admission and consideration of parol evidence of the partnership, said in the bill to be in writing, and neither the existence or loss of said written articles of partnership was in any manner proved by the complainant.

3d. The master in chancery made a mistake in charging the said

W'm H. Moore & W'm C. Mitchell with the supposed value of the goods, wares, and merchandize of N. Webb & Co., at the death of N. Webb, instead of the actual net receipts resulting from the best sale of said goods possible to be made at the time.

4th. The master in chancery erred in omitting to credit in his account the firm of W'm H. Moore & Co. with $190,000 debts shown to have been paid out of the assets of W'm H. Moore & Co., fixed by said master in chancery at the sum of $315,077.77.

5th. The master in chancery erred in rejecting the books of account as evidence, for the reasons stated in said report, as the weight of the evidence shows that all the entries in them are proper and cor-
799 rect, although, for reasons given by the book-keeper, not posted at the proper time.

Your petitioners would further state *he* herewith submits, marked No.' 1, 2, and 3, the affidavits of Kirby Benedict, John S. Watts, and C. P. Clever, familiar with the practice in such case, to show that the failure to file exceptions to the report of the master in chancery in this case, did not result from disposition to not comply with the orders of the master in chancery, but in order to file said exceptions under the rules of the supreme court, before the court, after the filing of report of the master in chancery in court.

Your petitioners therefore most respectfully ask that permission be now given to file exception before the master in chancery, to the report of said master, all of which is respectfully submitted.

MOORE & MITCHELL,
By BENEDICT, CLEVER & WATTS,
For Def'ts.

800 UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

W'm H. Moore, one of the defendants in the case of Gertrude E. Huntington and David L. Huntington against the said W'm H. Moore and W'm C. Mitchell, upon his oath states that the matters and things stated and set forth in the above petition, so far as stated from his own knowledge, are true in substance and in fact, and so far as stated from the information of others he believes them to be true.

W. H. MOORE.

Subscribed and sworn to before me this 17th day of August, A. D. 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Affidavit of W. H. Moore. Filed in open court this 17th day of August, 1870. W'm Breeden, clerk.

801 EXHIBIT "O."

First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON & DAVID L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

In pursuance of the authority and directions contained in a decree

rendered in this cause, whereby certain matters herein were referred to the undersigned, master in chancery, I do hereby summon the parties to this cause to attend a hearing of the matters in reference before me in said cause, at the court-house, in the town of Las Vegas, in the county of San Miguel, and Territory of New Mexico, at four o'clock p. m., on Friday, the twelfth day of August, A. D. 1870.

Las Vegas, N. M., August 8, 1870.

W'M BREEDEN,
Master in Chancery.

Underwriting.—To proceed upon the settlement of the master's report in the above-entitled cause, and to hear and consider exceptions to the master's draft report.

802 The solicitors of the parties are required to bring in their objections in writing.

W'M BREEDEN,
Master in Chancery.

On which said summons is the following endorsement, to wit:

Exhibit "O." G. E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Master's summons. Copy. Filed in open court this 17th day of August, 1870. W'm Breeden, clerk.

EXHIBIT "P."

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } In chancery.

In answer to a notice from the master in chancery, dated August 8, 1870, and served upon C. P. Clever, one of the solicitors of said defendants, the defendants make known to the said master that, by

803 rule in chancery which prevails in this case, they cannot on this day be required to file their exceptions to the master's report made herein.

They state—

1st. That, by the (83) eighty-third rule of the Supreme Court of the United States, and applicable to this case, the defendants are entitled to one month in which to file exceptions to the master's report, from and after the date of the filing of said report in the clerk's office.

2nd. The said master's report has not as yet been filed in the clerk's office, as required by said rules. These defendants now state that it would not be equitable in this case to require them to file their exceptions to the master's report in so short a time as has been specified in said notice, from the date thereof.

3rd. The said notice was served upon the said attorney during the session of the district court for the county of San Miguel, and which, from said time, has continued, and still is in session. And the

804 said master has been the actual clerk thereof, and the attorneys of said defendants have been daily attending to causes pending in said court.

4th. That it is within the knowledge of said master that said attorneys have been necessarily employed by their clients in suits pending in said court.

5th. William H. Moore, the only resident defendant in this Territory,

who has the personal management in behalf of the defendants, has not been present until last evening, August 11th, since some two or three days before the service of said notice, and resides within the county of Mora, and knew nothing of the contents of said report until his said late arrival.

6th. The said report refers to a large and voluminous body of pleadings, exhibits, proofs, mercantile books, papers, and evidences considsidered and rejected, which makes it absolutely necessary for a full extention of time to enable the defendant properly to prepare and present their exceptions to said report.

7th. That if the rule above cited required the defendants to
805 make and present their exceptions at the time fixed by the master, the record of the case, the facts and circumstances which now present themselves, render it both physically and mentally impossible for the defendants to have ready and present the exceptions at the time required by the master. They state that, from such examinations as they have been able to make of said report, extraordinary and enormous errors and mistakes have been made by the said master in the examination of the matters referred to him, and the conclusions at which he has arrived in his said report.

8th. The importance of the case and the amount involved, of themselves, manitests that no hasty action on the part of the master should preclude the defendants from their full, legal, and equitable right as to time in the preparing of exceptions and the presenting of the same.

9th. The defendants, therefore, in view of the above reasons, and others which might be mentioned, expect of the said master to post-
806 pone any action in regard to any exceptions which these defendhave a right to file to his report under the rules in equity above cited and referred to.

All of which is respectfully submitted.

CLEVER & BENEDICT,
For Def'ts.

On which said exhibit is the following endorsement, to wit:

Gertrude E. Webb & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Filed in my office this 12th day of August, 1870. W'm Breeden, master in chancery. Filed in open court this 17th day of August, 1870, (as Exhibit "P.") W'm Breeden, clerk.

District court, Mora County, August term, 1870.

GERTRUDE E. HUNTINGTON, ADM'X, &C., AND David L. Huntington
vs.
W'M H. MOORE AND W'M C. MITCHELL.

807 Kirby Benedict, an attorney of this court, upon being duly sworn, upon his oath saith that during the last term of the supreme court of this Territory, he was, in the absence of Judge Watts and Mr. Clever, *he was* employed by said Moore to attend to a matter which had grown out of this case and was then pending in said supreme court; that this was the only engagement or connection which he had, in any manner whatever, in this case until the 11th inst., while attending professionally the district court at Las Vegas, in the county of San Miguel, when said Moore came to Las Vegas and engaged this affiant as one of the counsel for defendants in this case; affiant saith that Judge Watts

was then absent, and supposed from the Territory. He saith that, in consultation with Mr. Clever concerning the master's report, which Mr. Clever showed a copy of, and from such information as came hastily to affiant's knowledge, he, with Mr. Clever, came to the conclusion that very grave and important errors or mistakes had been committed
808 by the master in his report; affiant was daily engaged in business in the said San Miguel court, and after the aforesaid employment could not see how, as one of the defendants, he could properly prepare exceptions and objections as the defendants' equities and required so as to present them to the master at the time he had given notice for the same to be done; affiant saith that, from his long experience both upon the bench and with the practice in chancery causes in this Territory, the plain reading of the eighty-third rule of the Supreme Court of the United States, and his belief that it was of authority and applicable to this case, he did not foresee that this court entertained a rule of practice not expressed in the said rules of the said Supreme Court, and had not been a rule of practice in this Territory, but which rule would preclude the defendants from filing their exceptions under the said eighty third rule to the master's report and having them heard and determined by the court, because the exceptions should be omitted to be filed before the master at the time to which he gave notice.

809 And further this deponent saith not.

KIRBY BENEDICT.

Subscribed and sworn to before me this 17th day of August, A. D. 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Exhibit No. 1. Filed in open court this 17th day of August, 1870. W'm Breeden, clerk.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

John S. Watts, upon his oath, states that he has been a practicing attorney or a judge in the Territory of New Mexico ever since the 26th day of June, 1851, and whether strictly correct, or in violation of the general rules of chancery practice, it has been the uniform and universal practice in New Mexico not to file exceptions to the report of
810 the master in chancery before the master, but in court or before the judge, after the filing of the master's report. Said affiant further states, on the next day after he was informed by telegram at Washington City that the case of said W'm H. Moore and W'm C. Mitchell would be called on the 15th of August, 1870, at Mora, New Mexico, he left for New Mexico; and said affiant further states that he would have been present before the master in chancery on the 12th of August, 1870, if it had been possible for him to do so by any means of conveyance accessible to him between Washington City and Las Vegas; and further saith not.

JOHN S. WATTS.

Subscribed and sworn to before me this 17th day of August, 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

No. 2. Gertrude E. Huntington & David L. Huntington vs.
811 W'm H. Moore & W'm C. Mitchell. Chancery. J. S. Watts, att'y.
Affidavit. Filed in open court this 17th day of August, 1870.
W'm Breeden, clerk. Benedict, Clever & Watts, att'y' for Moore & Mitchell.

TERRITORY OF NEW MEXICO, *County of Mora:*

Charles P. Clever, of lawful age, being duly sworn, upon his oath states that he is and has been a practicing attorney in the Territory of New Mexico for about ten years last past, (with the exception of about twenty months' absence from said Territory during that time;) that he is to some extent acquainted with the practice which has been followed in chancery proceedings in the district courts in the Territory of New Mexico; that in those cases which have come to his knowledge, in which matters were referred to the master in chancery, it has been the practice to except to the master's report after said report has been returned to
and filed in the clerk's office.
812 Further affiant saith not.

C. P. CLEVER.

Subscribed and sworn to before me this 17th day of August, 1870.
W'M BREEDEN, *Clerk.*

On which affidavit is the following endorsement, to wit:

Gertrude E. Huntington, David L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Filed in open court this 17th day of August, 1870. W'm Breeden, clerk.

And the same being argued by counsel, and the court, being sufficiently advised in the premises, sustains said motion.

It is therefore ordered that said report be referred back to the master, with liberty to the defendants to file their objections to the same, and authority to the master to consider said objections; and, with the assent
of the solicitors of the respective parties, this cause is set down
813 for hearing on Monday morning next on the pleadings, proofs,
the master's report, the exceptions thereto, if any there be, and the equities reserved.

And afterwards, to wit, on the 18th day of August, A. D. 1870, the following bill of exceptions was filed, which said bill of exceptions is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. Huntington, *vs.* W'M H. MOORE & W'M C. MITCHELL. } Chancery.

Be it remember' that, at the August term, 1870, of the United States district court in and for the 1st judicial district in said Territory of New Mexico, during the pendency in said court of the cause in chancery of Gertrude E. Huntington and David L. Huntington against William H. Moore and William C. Mitchell, a motion was made by the defendants to consolidate the original and cross-bill in this case, which motion is in the words and figures following, to wit:

(See page .)

814 Which said motion, after argument of counsel, was overruled by the court, and also a motion was made by said defendants to make Sarah Webb a party to this suit, which said motion is in the words and figures following, to wit:

(See page 712.)

Which said motion, after argument of counsel, was overruled by the court, and also a motion for time to except to the report of the master in chancery herein, which said motion is in the words and figures following, to wit:

(See page 706.)

Which said motion, after argument of counsel, was overruled by the court, and also a motion was made for leave to amend the answer of W'm H. Moore and W'm C. Mitchell to the original bill herein, which said motion is in the words and figures following, to wit:

(See page 617, and also Exhibit "B," page 635.)

Which said motion, after argument of counsel, was overruled by the court; and in support of said several motions the said defendants filed herein the affidavit of W'm H. Moore in this case, together
815 with the exhibits referred to in said affidavit in the words and figures following, to wit:

(See pages 618, 629 & 635.)

To which opinions of the court, in overruling said motions, the said defendants except, and ask that this their bill of exceptions herein may be signed and sealed by the court and made a part of the record in this case, which is done accordingly this 18th day of August, A. D. 1870.

J. G. PALEN, *C. J. &c.* [SEAL.]

On which said bill of exceptions is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Bill of exceptions. Filed in my office this 18th day of August, 1870. W'm Breeden, clerk.

And afterwards, to wit, on Friday, the 19th day of August, A. D. 1870, being the 5th day of the August, A. D. 1870, term of the said
816 district court for the said county of Mora, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &c., & David L. Huntington, her husband, *vs.* W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now come the said defendants, by their counsel, and move the court to suppress the depositions of Joab Houghton and William R. Shoemaker, filed as evidence in this cause, for reasons stated in said motion, and in an affidavit filed; which said motion and affidavit are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &c., & David L. Huntington, *vs.* W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now comes the said defendants, W'm H. Moore and W'm C. Mitchell, by Benedict, Clover and Watts, their attorneys, and moves the

court to strike out and suppress the depositions of Joab Hough-
817 ton and W'm R. Shoemaker, filed as evidence herein, upon the ground and for the reason that several of the answers to important questions were read off from written statements prepared during the recess of the examination of said witnesses, and read off by them from the written statements so prepared, and recorded by the master in chancery as so read off from said written statement by the witness, who was professing to testify orraly in the case; also because said evidence is hearsay.

BENEDICT, CLEVER & WATTS,
Att'ys for Def'ts.

On which said motion is the following endorsement, to wit:

Gertrude E. Huntington & David L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Chancery. Filed in open court this 19th day of August, 1870. W'm Breeden, clerk. Benedict, Clever and Watts, for def'ts.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

818 I, John S. Watts, attorney-at-law, upon my oath state, that I was present as the solicitor of W'm H. Moore & W'm C. Mitchell, defendants in the chancery suit of Gertrude E. Huntington and David L. Huntington as complainants, when the depositions of Joab Houghton and W'm R. Shoemaker, witnesses of the complainant, were taken before W'm Breeden, master in chancery, and remained present during the entire examination of said witnesses, and put to said witnesses all the questions on cross-examination. Said affiant further states that in answer to some of said questions, the answers were read by the witnesses from papers held in their hands, before them, and apparently previously prepared by said witnesses, not in the presence of said master in chancery; and further saith not.

JOHN S. WATTS.

Subscribed and sworn to before me this 19th day of August, A. D. 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

819 G. E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Filed in open court this 19th day of August, 1870. W'm Breeden, clerk.

And the same being argued by counsel, and the court being sufficiently advised in the premises, overrules said motion.

And afterwards, to wit, on Friday, the 19th day of August, A. D. 1870, being the fifth day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

820 And now come the said defendants, by their counsel, and move

the court to suppress certain portions of the depositions of Joab Houghton and William R. Shoemaker filed as evidence herein, for reasons stated in said motions, which specify the portions of such depositions objected to, & being argued by counsel, is taken under advisement by the court; which said motions are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington,
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

The defendants in this cause, by Benedict, Clever & Watts, their attorneys, move the court to strike , as illegal and irrelevant, the following portion of the deposition of Joab Houghton, taken in favor of said complainants before William Breeden, commissioner in chancery, upon the order of the court herein, to wit:

Question No. 4 and the answer to said question. The answer is the opinion of the witness and not facts known to him.

821 Question 5 and answer to it. The answer is not evidence, for the reason that it is hearsay statement of a deceased person who, if alive, would not be a competent witness.

Question 6 and answer to it. This is hearsay declaration of a party competent to be examined as a witness, and not competent testimony.

The said defendants move also that the commissioner in chancery be directed to call the said Joab Houghton before him, and require an answer to question 6 of said defendants on cross-examination, for the reason that it appears by the answer of said witness to question 2nd, question 5, & question 63, shows that said Joab Houghton was not such attorney of the complainant as to be *entitled* from answering said question on that ground.

Said Joab Houghton should also be required to answer question 24, on the cross-examination of the def'ts, for the reason that said deed or a copy of it was proper and material evidence in support of the answer of said def'ts as to said property.

822 The said witness, Joab Houghton, should be recalled and directed to answer to questions not answered, for the reason that the master in chancery had no power to decide on the competency, materiality, or relevancy of the questions, which ruling of the commissioner cut off the means of testing the memory, the truth, and varacity of the witness, and facts material to be used on the hearing of the original cause.

WATTS, CLEVER & BENEDICT,
For Def'ts.

On which said motion is the following endorsement, to wit:

Gertrude E. Huntington, adm'x, &c., & David L. Huntington, vs. W'm H. Moore & W'm C. Mitchell. Chancery. Motion to suppress and strike out certain portions of dep. of J. Houghton. Filed in open court this 19th day of August, 1870. W'm Breeden, clerk.

GERTRUDE E. HUNTINGTON, ADM'X, &C., DAVID L. Huntington,
vs.
823 W'M H. MOORE & W'M C. MITCHELL. } Chancery.

The said defendants in this case now, by Clever, Benedict, and Watts,

move the court to strike out as illegal and irrelavant the following portions of the deposition of W'm R. Shoemaker, taken in favor of said complainants before W'm Breeden, commissioner in chancery, upon the order of the court herein, to wit: Question 4 and the answer to it. This answer should be stricken out as the witness was the father and agent of the complainant, and the putting of leading questions to such an eager witness was improper and illegal after it was objected to. Question 11 and answer to it. This answer contains nothing but hearsay declaration of Nathan Webb, and an enthusiastic opinion of the great capacity and splendid business habits of his son-in-law, Nathan Webb, deceased. Question 12 and the answer to it. The answer of the witness is but his own opinion derived and stated from facts and conversations not given in evidence by the witness, and should be stricken out of the record as illegal evidence. The witness should state facts, and
824 leave the court to determine from the facts what was the interest of Webb in the business.

WATTS, CLEVER & BENEDICT,
Att'ys for Def'ts.

On which said motion is the following endorsement, to wit:

Gertrude E. Huntington, adm'x, &c., & David L. Huntington, vs. W'm H. Moore & W'm C. Mitchell. Chancery. Motion to strike out and suppress portions of the evidence of W. R. Shoemaker. Filed in open court this 19th day of August, 1870. W'm Breeden, clerk.

And afterwards, to wit, on Saturday, the 20th day of August, A. D. 1870, being the sixth day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
825 WILLIAM H. MOORE & WILLIAM C. Mitchell. } Chancery.

And now come the said defendants, by their solicitors, and move the court for leave to file an objection to the master's report in this cause, which objection is stated and specified in said motion; and which motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington,
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

The said defendants, W'm H. Moore & W'm C. Mitchell, by their attorneys, move the court for leave to file before the master in chancery, before whom this case is now pending, the following objections to said report of said defendants, omitted in the hurry of preparing said objections, to wit:

"The master in chancery erred in including in account the gains of Nathan Webb, deceased, in the business of W'm H. Moore & Co., from the 13th of June, 1861, to the 16th of September, A. D. 1862, as said

gains are not a part of the community property, and not liable
826 to be decreed to the administratrix of the estate of Nathan Webb, but belongs to the mother of Nathan Webb absolutely."

WATTS, CLEVER & BENEDICT,
For ~~Def't~~s.

On which said motion is the following endorsement, to wit:

Gertrude E. Huntington, adm'x, &c., & David L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Chancery. Motion to file additional objections. Filed in open court this 20th day of August, 1870. W'm Breeden, clerk, Clever, Benedict & Watts, for def'ts.

827 *Master's report.*

First judicial district court, Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL.
} Chancery.

To the Honorable Joseph G. Palen, chief justice of the supreme court of the Territory of New Mexico, and judge of the first judicial district court thereof, sitting in chancery within and for the county of Mora:

In pursuance and by virtue of a certain order and decree of this court made in this cause, on the 29th day of March, A. D. 1870, whereby it was referred to the subscriber, a master in chancery of this court, to take and state the accounts mentioned in the pleadings in this cause, and especially to take and state the accounts of the late firms of William H. Moore & Co., William H. Moore, Adams & Co., and N. Webb & Co., with the estate of Nathan Webb, deceased, with authority
828 to the undersigned master to employ a competent accountant to assist him upon said accounting, to examine the proper and necessary parties in relation to the matters in reference, to examine witnesses orally or otherwise, in relation to such matters, and to require to be produced before him any books of account, papers, or documents relating to said accounts, and leave to either party to produce and read in evidence on said reference the proofs in chief and the pleadings in this cause—

I respectfully certify and report that, pursuant to the authority conferred by said decree, I employed a skillful and experienced accountant, who has faithfully devoted himself to the duty assigned him; that I caused to be produced before me the books of account of the late firms of W. H. Moore & Co. and N. Webb & Co., and abstracts duly verified of the accounts from the books of William H. Moore, Adams & Co., material to be considered on the reference before me; that, under the authority of said decree, I directly examined one witness only, in relation to the matters in reference, to wit, Henry V. Harris, whose testimony is annexed to this report.

In considering the matters before me by virtue of the provisions of said decree, I relied mainly upon the proofs in chief in this cause
829 taken pending said reference, and upon the pleadings and exhibits in this cause.

I issued and caused to be properly served, on the 5th day of May, A. D. 1870, a summons to the solicitors of the respective parties to attend a hearing of the matters in reference, on the 16th day of May,

A. D. 1870; on which day I was attended by Mr. Elkins, for the complainants, and Mr. Watts, for the defendants, and was thereafter attended by said solicitors until June 13th, 1870, and at subsequent hearings by Mr. Elkins, for complainants, and Mr. Clever, for defendants.

I have looked into the bill, answers, and exhibits in this cause, and have carefully considered the same. I have also carefully and diligently examined the accounts contained in the said books of account, and the testimony with reference to the same.

I find that Nathan Webb, deceased, had an interest of one-third in the business of the firms of N. Webb & Co. and William H. Moore & Co., and that such interest ceased and determined upon the death of Nathan Webb, October 15th, 1866; at which date the estate of Nathan
Webb, deceased, was entitled to one-third of the net assets of said
830 firms of N. Webb & Co. and W. H. Moore & Co.

The claim of the complainant that Nathan Webb paid into the firm of W. H. Moore & Co., when he became a member thereof, the sum of fifteen thousand dollars, is disallowed. I find that there is due to the estate of Nathan Webb, deceased, from the defendants, William H. Moore and William C. Mitchell, as surviving partners of the said firms of W. H. Moore & Co. and N. Webb & Co., at this date, August 20th, 1870, the sum of ninety-seven thousand five hundred and ninety-six dollars and nineteen cents ($97,596.19,) as shown by the schedul's marked A and B, hereunto annexed and forming part of this report, to which reference is respectfully made.

The business of said firms was ostensibly conducted seperately and distinctly at the different points where they carried on business, and the accounts of each firm are stated and presented seperately and distinctly.

Schedule A, showing the assets and liabilities of the firm of N. Webb & Co., at the date of the death of Nathan Webb, deceased, and the state of the accounts between that firm and the estate of Nathan
831 Webb, *of Nathan Webb*, deceased, at his death.

Schedule B shows the assets and liabilities of the firm of W. H. Moore & Co., at the date of Nathan Webb's death, and the state of the accounts between that firm and the estate of Nathan Webb, deceased, at his death, and also the amount due for interest to this date, and the total amount due by said surviving partners to said estate, at this date.

I have further to certify and report that, at a hearing in this cause, to proceed upon the settlement of the master's report, and for hearing and considering objections to the master's draft-report, held on the 18th day of August, A. D. 1870, I was attended by Mr. Elkins, solicitor for the complainants, and by Hon. John S. Watts, solicitor for the defendants. At said hearing, said solicitor for the complainants filed one objection, which is filed herewith. and which was overruled.

The solicitor for the defendants filed twelve objections to said draft-report, which are also filed herewith, and which were argued and considered.

832 The sixth objection of the defendants was allowed in part. The language objected to in the third objection is omitted from the report; the objection was allowed. I overruled the first, second, fourth, fifth, seventh, eighth, ninth, tenth, eleventh, and twelfth objections.

All of which is respectfully submitted.

WM BREEDEN,
Master in Chancery.

AUGUST 20TH, 1870.

Annexed are the Schedules A and B mentioned in the foregoing report.

SCHEDULE A.

Assets of N. Webb & Co., October 15th, 1866.

1. Goods, wares, and merchandize on hand, (as per answer of def't Moore, p. 26, and J. Houghton's testimony.)		$78,979 16
2. Debts due and owing to N. Webb & Co.	$76,105 03	
Less amount of train-account and "expenses-account," improperly stated as debts due and owing	19,883 47	
Actual debts due and owing, (def'ts Moore's answer, p. 16, & Exhibit "A."		56,221 56
833 3. Cash received by W. H. Moore for W. H. Moore & Co., (affidavit of def't Moore, dated Sept. 29th, 1869, p. 6,)		10,258 75
4. Cash received by W. H. Moore for W. H. Moore, & Co. for mule-train, (affidavit of def't Moore, dated Sept. 29th, 1869, p. 7,)		8,166 70
5. Cash received by W. H. Moore for W. H. Moore & Co., for mill, (def't Moore's answer, p. 39.)		2,000 00
Total assets		155,626 17

Liabilities of the firm of N. Webb & Co. at the date of Nathan Webb's death.

1. Debts due and owing by N. Webb & Co., as stated by def't Moore's answer, p's 24 & 31, and Exhibit A	$61,462 61	
From which deduct amount of goods, wares, & merchandise sent to Mesilla, after the death of Nathan Webb, and which are charged in book of accounts of W. H. Moore & Co., and by them entered in day-book of N. Webb & Co., p. 641, and included in the above amount, stated as debts due and owing at N. Webb's death	$16,337 66	
834 Actual debts due and owing by N. Webb & Co. at N. Webb's death		$45,124 95

I have allowed, on account of worthless and uncollectable debts, fifty per cent. of the full amount due and owing to the firm of N. Webb & Co., after deducting therefrom the amount of the accounts of N. Webb & Co. against N. Webb and wife, as follows, to wit:

Total debts due said firm	$76,105 03		
Less accounts of N. Webb & wife, (as per Exhibits G & H.)	28,342 57		
Leaves debts due and owing to N. Webb & Co.	47,762 46		
Less fifty per cent		23,881 23	
Deducted from total assets of			$69,006 18
Leaves net assets at the date of Nathan Webb's death			$86,619 99
Nathan Webb's interest, one-third, is			28,873 33
Less amount of accounts of N. Webb & Co. against N. Webb and Mrs. Webb			28,342 57
Leaving the amount due the estate of N. Webb, deceased, from the business or assets of N. Webb & Co.			530 76

There is a tract of land known as the Brazito tract, which does
835 not form part of the assets of N. Webb & Co., but belongs jointly to the parties in this suit.

W'M BREEDEN,
Master in Chancery.

AUGUST 20TH, 1870.

SCHEDULE B.

Assets of the firm of W. H. Moore & Co. at date of Nathan Webb's death, October 15th, 1866.

Stock of goods, wares, and merchandise on hand at Fort Union July 2, 1866, as per inventory, (see testimony of H. V. Harris)	$182,656 71		
Less sales to October 15, 1866, as per merchandise account from books of Moore, Adams & Co	87,898 10		
Leaving stock on hand October 15, 1866			94,758 61
Debts due and owing to said firm, (def't Moore's answer, p. 37, "Exhibit C," and testimony of H. V. Harris)			322,958 77
W. H. Moore & Co's interest in mill on Mora River, (def't Moore's answer, p. 30)			7,500 00
Train and mules, (testimony of H. V. Harris)			60,000 00
836 Total assets			$485,217 38

Liabilities of the firm of W. H. Moore & Co. at the date of Nathan Webb's death.

Debts due and owing, (def't Moore's answer, p. 37 and Exhibit C)	$54,095 14		
Worthless and uncollectable debts, allowed as claimed, (def't Moore's answer, p. 38)	$100,000 00		
			154,095 14

Leaving this amount as net assets of the firm of W. H. Moore & Co. at Nathan Webb's death		$331,122 24
Less amount of capital at the time Webb became a member of the firm, (def't Moore's answer, p. 35)		16,044 47
Net surplus capital Oct. 15, 1866		$315,077 77
Nathan Webb's interest, one third		$105,025 92
Less amount of accounts of W. H. Moore & Co. against N. Webb, (Ex. G)	$4,682 41	
And against Mrs. Webb, (Ex. H.)	11,044 10	
		15,726 51
This amount due the estate of Nathan Webb from the business and assets of W. H. Moore & Co., Oct. 15, 1866		$89,299 41
837 To which add amount due from business of N. Webb & Co. at same date		$530 76
Making a total due to the estate of Nathan Webb, deceased, October 15, 1866, of		89,830 17
Interest on that amount from October 15, 1868, to October 15, 1869, at 6 %		5,389 81
Amount due Oct. 15, 1869		$95,219 98
Less amount paid complainant at that date by the defendants, W. H. Moore and W. C. Mitchell, by order of the court		1,000 00
Leaving amount due		$94,219 98
Interest on this amount from October 15, 1869, to August 20, 1870, (this day)		3,376 21
August 20, 1870. Total amount due the estate of Nathan Webb, deceased		$97,596 19

W'M BREEDEN,
Master in Chancery.

AUGUST 20TH, 1870.

On which said paper is the following endorsement, to wit:

838 G. E. Huntington, administratrix, &c., & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Master's report. Filed in my office this 20th day of August, 1870. W'm Breeden, clerk.

First judicial district court Territory of New Mexico. In chancery.

GERTRUDE E. HUNTINGTON AND DAVID L. Huntington, her husband,
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

Deposition of Henry V. Harris, taken by and before W'm Breeden, master in chancery, to be used upon the reference of matters in this cause pending before said master.

839 Said deposition was taken by said master at his office in Santa Fé, New Mexico, commencing on the 11th day of July, A. D. 1870; and said master was attended upon such examination by counsel of the respective parties—Mr. Elkins for complainants, and Mr. Clever for defendants.

H. V. HARRIS, being first duly sworn, upon his oath states:

Question by the master:

What is your name, age, occupation, and place of residence, and how long have you resided there?

Ans. My name is Henry V. Harris. I am 29 years of age, and book-keeper and clerk for the firm of W. H. Moore & Co., at Fort Union, New Mexico, where I reside. I have been so employed for something more than seven years. I commenced in March, 1863.

Q. 2. Please examine paper marked L, and state what it is, and under whose direct it was prepared, and whether it is in all respects a full and true statement of the business of Robert Campbell & Co. with W. H. Moore & Co. at the several dates mentioned in the account.

Ans. It is a statement of the account of Robert Campbell &
840 Co. with W. H. Moore, Adams & Co., prepared under my directions as required by the master in chancery, before when the case is now in reference, and it is a true and correct statement of the account as taken from the books of W. H. Moore, Adams & Co.

Q. 3. Please examine paper marked "M," and state what it is, under whose direction it was prepared, and whether it is in every respect a full and true statement of the merchandise account of W. H. Moore, Adams & Co., for the time therein stated.

Ans. It is a true statement of the merchandise account of Moore, Adams & Co., taken from their books, prepared under my direction.

Q. 4. Please examine paper marked "N," and state what it is, and under whose direction it was prepared, and whether it contains a full and complete statement of the account of W. H. Moore & Co. with W. H. Moore, Adams & Co.

Ans. It is a true statement of the account of W. H. Moore & Co. with W. H. Moore, Adams & Co., and is true and correct, as taken from the books of W. H. Moore, Adams & Co.

841 Q. 5. Please examine paper marked "O," and state what it is, and under whose direction it was prepared, and whether it is a true statement of the account of W. H. Moore with W. H. Moore, Adams & Co.

Ans. It is a statement of the private account of W. H. Moore with W. H. Moore, Adams & Co., and is true and correct.

Q. 6. Please examine paper marked "P," and state what it is, and under whose direction it was prepared, and whether it is a correct statement of the account of W. C. Mitchell with W. H. Moore, Adams & Co.

Ans. It is a true and correct statement of the account of W. C. Mitchell with W. H. Moore, Adams & Co., made under my direction, as were all the accounts above mentioned.

Q. 7. Does the private account of W. H. Moore, on the books of the firm of W. H. Moore & Co. and W. H. Moore, Adams & Co., show all the money, merchandise, and effect drawn by Mr. Moore from those

firms or not? Who kept the accounts, and in what manner were they kept? Did Mr. Moore take what he required from the establishment and report it to the book-keeper, or was the money drawn by him paid to him by the cashier or clerk, and was the account with Mr. Moore kept carefully and strictly, or otherwise?

842 Ans. The account, as kept on the books, shows all the amounts drawn by Mr. Moore from those firms. The accounts were kept by myself and Mr. Magruder, and they were kept in a correct and proper manner. The money he received was paid to him by the cashier or book-keeper generally, and all that he ever drew out was charged to his account.

Q. 8. Do you know whether Mr. Moore had any means outside of his interest in the firm of W. H. Moore & Co. at the time Nathan Webb became a member of that firm?

Ans. Yes; he was doing quite a large business in Tecolote under the firm of Moore & Mitchell, and they had been doing business there for over ten years, and continued doing business there for some time after Mr. Webb became a member of the firm of W. H. Moore & Co. at Fort Union. Webb was not interested in the business at Tecolote.

Q. 9. Are you acquainted with Mr. W. H. Moore's habits; and if so, are they economical or otherwise?

Ans. I am pretty well acquainted with his habits. He is inclined to be liberal; but never goes beyond his means. I consider him an honest man.

843 Q. 10. Was any effort made prior to the commencement of this suit to settle the business of W. H. Moore & Co. and N. Webb & Co. and W. H Moore, Adams & Co., and determine the interest of the estate of Nathan Webb, deceased, in said business; and if so, what was the nature of the effort, who' was it made by, to what extent was it prosecuted, and what result was reached?

Ans. There was an effort made to determine what the firms had made up to Webb's death, by posting the books, making entries that had previously been omitted. I made the attempt at the request of W. H. Moore, and as far as my knowledge and ability went, I think I made a pretty fair estimate of the condition of the business, and think I arrived at a fair estimate of what the firm of W. H. Moore & Co. had gained, and what they were worth at the time of N. Webb's death. All that was after this suit was commenced. Before the commencement of this suit I could, from my efforts, arrive at no definite conclusion as to the business of said firms. Both before and after the commencement of this suit I was repeatedly urged by Mr. Moore to fix up their books.

TUESDAY, *July* 12, 1870.

Q. 11. Under whose direction was the day-book of W. H.
844 Moore & Co. written upon the 10th of August, 1868. pages 163 to 177, and were those entries made at that date or subsequently?

Ans. Those entries were all made by myself of my own accord. The most of them are entries that should have been made previous to that date. I commenced the first entry at that date, and made entries at different times subsequently, but did not change the date. The entries are all made correctly.

Q. 12. From whence was the data obtained on which those entries were made, and why were not those entries, which embrace transactions amounting to hundreds of thousands of dollars, made at the times such transactions took place?

Ans. The most of those entries should have been made long before

they were, some of them more than a year before they were, a few of them perhaps two or three years before they were. The entries were not made at the proper times, from neglect on my part. The data from which they were made was obtained from my knowledge of the books and the business and reference to the different accounts standing open on the ledger.

Q. 13. Were all of such entries, or the greater part of them,
845 made in the day-book refer'ed to, and posted to the ledger before the commencement of this suit, or otherwise?

Ans. A number of them were made after the commencement of the suit, but I cannot state what part were made before the commencement of the suit. The books of W. H. Moore, Adams & Co. will show the exact date of all the transactions in which they were concerned.

Q. 14. Before those entries were made in the books was it possible to determine from the books the state of the accounts of the firm of W. H. Moore & Co., the result of its business operations, its gains or profits, or the interest of the several members of the firm in the business and assets?

Ans. It was impossible to arrive at anything like an exact or definite estimate of the gains, the state of the accounts, or the interest of the partners.

Q. 15. Was there or not ample time between the date of the death of Nathan Webb and the 10th day of August, 1868, to have made all entries required to be made in those books to have closed the accounts in the books, and to have reached as definite a determination of the state of the business and the interest of each partner as was
846 possible from the character and condition of the business?

(Objected to by defendant, as the question before the commission' is, whether the entries referred to are right or wrong, and not as to the time they were made.)

Ans. Yes, the time was ample.

Q. 16. By whose direction, by whom, and at what date were the entries made in the day-book of N. Webb & Co., pages 636 to 644 inclusive, & with what amount are W. H. Moore & Co. credited in those entries?

Ans. When the books of N. Webb & Co. came up from Franklin, Texas, I drew off the account of W. H. Moore & Co. from those books, and also drew off the account of N. Webb & Co. on the books of W. H. Moore & Co., and after comparing the two statements, I found that those entries made in the day-book of N. Webb & Co., on pages 636 to 644, inclusive, had been omitted to be made by N. Webb & Co., and I made them. The amount so credited to W. H. Moore & Co. in those entries is $295,663.90, and the amount debited to W. H. Moore & Co. is $49,554.04, all of which entries are correct. I think all of these entries were made soon after the books of N. Webb & Co. came up to
847 Fort Union from Franklin, which was after the commencement of this suit.

Q. 17. From the date of Webb's death were or were not the books of N. Webb & Co. within the reach of and accessible to W. H. Moore & Co.?

Ans. The books of N. Webb & Co. were, for a long time after the death of N. Webb, at Franklin, Texas, in charge of the agents of the surviving partners of the firm of W. H. Moore & Co.

Q. 18. Were all goods which were purchased east for N. Webb & Co., or marked N. Webb & Co., shipped direct to Franklin, or were any of such goods at any time unloaded and examined at Fort Union; and if so, were any portions of such goods retained at Fort Union?

(Objected to by defendants' counsel as it is shown that the firm of N. Webb & Co. was a branch house of W. H. Moore & Co.)

Ans. All goods purchased east for N. Webb & Co. were packed and marked to N. Webb & Co., and shipped direct to them. Some of the goods were unloaded at Fort Union and reshipped, but no goods, to my knowledge, were ever retained at Fort Union.

Q. 19. In your former examination you testified with reference to a note for $11,050, credited on the account of Capt. W. H. Bell,
848 being for the amount of money loaned him. By whom was the amount loaned, and was it on account of W. H. Moore & Co., or on Mr. W. H. Moore's private account? What, if any, security was taken for the payment of the note, and has the said note been paid, or has any demand been made for the payment, or any effort made to collect the amount?

Ans. The money was loaned to Capt. Bell by and on account of the firm of W. H. Moore & Co. I know of no security having been given for the payment of the money. The note has never been paid. Several demands have been made upon Capt. Bell for the money by W. H. Moore & Co. He promises to pay it, but has, as yet, never done so.

Q. 20. In the accounts of Col. H. M. Enos, to balance his account, the sum of $9,814.00 is charged to profit and loss. Why was this charge made?

Ans. I transferred the account of Col. Enos' account to the account of profit & loss, as I considered the account doubtful and uncollectable.

Q. 21. In the books of W. H. Moore & Co., on the 15th of August, 1864, real estate is charged two thousand dollars. What real estate was this, on what account was it purchased, and what was done with it?

849 Ans By reference to the day-book of W. H. Moore & Co., at that date, James M. Giddings has a credit by real estate $2,000, and he is also charge' with $1,342.25, amount due by him to Moore & Mitchell. This real estate was purchased of Giddings to secure the payment of this indebtedness. I cannot state what has become of it, but think it has been sold.

Q. 22. On the books of W. H. Moore & Co., May 1, 1867, N. Webb & Co. are charged $37,802.83 for sundry accounts in November and December, 1866. What were those accounts?

Ans. The amounts so charged N. Webb & Co., on the books of W. H. Moore & Co., were for money paid by R. Campbell & Co. for goods purchased for N. Webb & Co., in the spring of 1866. The dates reported on the book are the dates when Campbell & Co. paid the accounts.

JULY 13, 1870.

Q. 23. What persons constituted the firm of Moore & Reese?

Ans. I always supposed it was W. H. Moore, W. C. Mitchell, and B. L. Reese, but I know nothing positively. I know W. H. Moore, W. C. Mitchell, and B. L. Reese, were partners, but do not know
850 whether there were any more in that firm. I have understood from Messrs. Moore & Mitchell that Moore and Reese were partners before Mitchell was connected with them.

UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, master in chancery, before whom the above-entitled cause stands in reference, do hereby certify that the foregoing depositions was taken by me at my office in Santa Fé, in the county of Santa

Fé, and Territory of New Mexico; that said depositions were commenced on the 11th day of July, A. D. 1870, and closed on the 13th day of July, A. D. 1870; that I was attended upon the examination by counsel of the respective parties, who were given an opportunity to examine and cross-examine the witness; and that the above-named Henry V. Harris, before testifying, was by me sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, and that his foregoing deposition was reduced to writing by me.

Witness my hand and seal this 25th day of July, A. D. 1870.

851 W'M BREEDEN, [SEAL.]
Master in Chancery.

On which said paper is the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Master's report & testimony of H. V. Harris. Filed in my office this 20th day of August, 1870. W'm Breeden, clerk.

852 "L."

Messrs. Rob't Campbell & Co. in ac. with W. H Moore, Adams & Co.

1866.				
Nov.	10	To cash	5,000 00	
"	26	" "	20,000 00	
Dec.	"	" "	5,367 80	
1867.				
Jan'y	7	" "	23,081 30	
	21	" "	2,472 85	
	31	" "	550 00	
Feb'y	5	" "	10,000 00	
	11	" "	8,018 36	
	16	" Edward Lunby	234 69	
Mar.	1	" cash	2,994 55	
	5	" "	5,000 00	
	6	" "	642 15	
	11	" "	643 28	
	18	" interest for p'm on gold dr'ft	49 23	
		" cash	3,279 33	
		" "	25,000 00	
	25	" Charles Wentz	322 47	
	30	" interest for p'm gold dr'ft	45 45	
April	2	" cash	13,930 00	
	6	" "	5,000 00	
	16	" "	10,000 00	
	22	" "	853 10	
	24	" "	2,000 00	
	25	" N. S. Davis	1,600 00	
May	1	" cash	611 88	
853	11	" "	465 15	
	13	" "	823 00	
	15	" "	2,383 94	
	29	" "	5,000 00	
June	11	" "	10,000 00	
	13	" "	3,264 80	
	17	" "	1,653 40	
	19	" "	3,200 00	
	21	" "	3,000 00	
	22	" interest, p'm on gold d'ft	46 30	
July	2	" cash	10,100 00	
	10	" "	10,000 00	
	17	" "	10,449 86	
	29	" "	3,194 08	
Aug'st	9	" gold adventure	428 85	
	17	" cash	100 00	
	23	" "	2,089 58	
	28	" "	3,238 25	
		Am't forward	216,134 05	
867.				
Aug'st	28	To am't bro't forw'd	216,134 05	
		" gold adventure	851 09	
	29	" cash	3,499 72	
Sept.	2	" interest, p'm on gold dr'fts	116 29	
	3	" cash	21,584 59	
	19	" gold adventure	76 75	
		" interest	17 32	
	23	" gold adventure	1,462 92	

854	Oct. 4	" " "	180 09	
		" Henry J. Cuniffe	44 50	
		" interest	44 50	
	12	" cash	18,058 94	
	16	" "	3,651 50	
		" gold adventure	1,036 12	
	25	" cash	20,931 50	
	26	" "	2,500 00	
	29	" gold adventure	91 61	
		" John Dold	189 69	
		" Blottman & May	5,596 67	
	30	" expense	278 73	
		" N. Webb & Co., (proceeds note for sale of mules)	8,166 72	
		" H. V. Harris	100 00	
	31	" expense	3,034 74	
		" W. H. Moore & Co	129 17	
	Nov. 4	" gold adventure	1,457 60	
	13	" cash	14,884 05	
	19	" gold adventure	144 77	
		" John Dold	34 01	
	22	" cash	5,338 08	
	25	" interest	149 86	
	28	" Henry J. Cuniffe	1,337 64	
	29	" cash	5,656 81	
	Dec'r 2	" "	686 00	
	12	" Capt. N. S. Davis	130 64	
		" John Dold	130 64	
	16	" cash	11,242 33	
	855 18	" "	417 08	
		" James Delany	130 00	
	23	" gold adventure	457 00	
		" cash	319 00	
	1868. 27	" "	20,000 00	
	Jan'y 8	" "	13,261 57	
	13	" Doct. Longuill	2,000 00	
	21	" gold adventure	31 06	
		" cash	21 55	
	22	" "	5,274 67	
			390,881 57	
	1868.			
	Jan'y 22	To am't bro't forward	390,881 57	
	27	" cash	1,485 10	
		" "	130 00	
	Febr'y 3	" "	325 00	
	10	" "	5,017 44	
	18	" "	4,583 21	
	21	" "	1,860 90	
	26	" "	330 00	
	Mar. 7	" "	165 75	
	11	" "	4,371 55	
	12	" "	200 00	
	14	" Proceeds of 7 0-20 oz. gold	142 34	
	18	" cash	8,250 00	
	23	" "	4,878 67	
	30	" "	16,643 86	
	31	" "	592 00	
	April 2	" "	1,294 40	
	10	" V. S. Shelby for sight draft	10,000 00	
	856 13	" cash	6,961 39	
	24	" "	1,148 60	
	27	" "	3,173 22	
	May 8	" gold adventure	589 48	
	13	" " "	587 54	
		" cash	4,963 14	
	15	" "	1,815 33	
	18	" "	1,500 00	
	20	" "	3,192 18	
		" gold adventure	863 89	
		" cash	645 00	
	27	" gold adventure	550 48	
	June 3	" " "	1,770 49	
	5	" cash	1,947 00	
	22	" gold adventure	3,487 41	
	23	" Moreno Ditch Co	5,392 52	
	July 1	" cash	1,120 20	
	16	" W. H. Chick & Co	2,415 87	
	21	" Moreno Ditch Co	3,673 48	
	28	" Cash	642 00	
	August 20	" Doct. Peters	10 80	
	Sept. 24	" cash	1,733 35	
	28	" "	27,367 75	
	Oct. 1	" "	2,091 45	
	5	" "	3,500 00	
	13	" Brook Kerby for sight d'ft	500 00	
	Nov. 14	" M. G. Bishop	2,400 53	
		Am't forward	534,994 89	

857		To am't bro't forward	534,994 89	
		CR.		
1866.				
Oct.	22	By billiard balls		$38 50
Dec.	3	" cash paid Jas. Brice		10,500 00
		" W. H. Moore & Co., d'ft to M. Coun & Co.		1,665 40
	17	" cash d'ft for Muse, Roshoe & Co		784 85
1867.				
Jan'y	21	" John Dold to pay S. McCartney & Co		1,300 00
		" H. H. Green " J. C. McFarran		100 00
	24	" W'm Kronig, W. H. M. & Co, d'f't for J. W. Dyer		338 04
	25	" N. S. Davis, sight draft, W. H. M. & Co		2,500 00
Feb'y	9	" d'ft for M. Burke		4,000 00
Mar.	"	" 2½ q'r's drawing-paper		12 90
	"	" John Dold p'd int. on note F. Meyer & Co		247 27
	13	" cash in Col. Kinzie's check ret'd		26 50
		" bill machinery for Q M. Dep't		258 08
	18	" Brunswick & Hecht, bal. on note		4,448 89
		" Am't paid Lightner & Co., (m'd'se)		126 00
	25	" Capt. Inman for d'ft for F. C. Kemplon		200 00
		" cash for bill ex. sent to Germany		100 00
		" Brunswick & Hecht p'd on note		160 00
	26	" one d'ft for C. W. Kitchen		1,500 00
		" " " " M. Desmarais & Co		2,000 00
		" " " " W. G. Searcy		1,200 00
	30	" bill of seeds		21 55
April	2	" our d'ft for Jas. Banville		650 00
	6	" " " " Brunswick & Hecht		700 00
	9	" " " " F. M. Smith		326 00
858	15	" Col. J. V. Dubois		60 00
	16	" our d'ft for A. Dold & Co		3,000 00
		" bill of exchange for Mary Enright		70 00
May	1	" our d'ft for Jacob Enders		401 63
	6	" " " " J. Ronelle		2,500 00
	17	" due-bills for G. Badd		200 00
	18	" expense for rep'g levelling instrument		8 50
		" " paid Lindel Hotel		42 00
		" copper mine, expense on ore		7 00
		" O. M. Brown for cash		125 00
		" W. H. Moore & Co :		
		" paid J. Wolfe & Son's note & int		1,451 76
		" " Hastings, L. & Co		2,243 16
		" " Cantwell & Short		1,205 00
			$534,994 89	44,518 03
1868.		To am't bro't forward	534,994 99	
1867.		By am't bro't forward		44,518 03
May	18	" N. Webb & Co. for bal on note & int. for R. C. & Co		5,201 88
		" m'd'se p'd H. Bernard & Co		148 33
		Scott & Melliér		40 16
		for day-book		15 00
		bal. on seeds		30
		W. L. Ewing & Co		4,000 00
		" H. V. Harris for P. O. stamps		12 85
		" interest as per statement		48 57
859		" W. H. & Co., amount remitted in Nov., 1866		25,000 00
		" our d'ft for Francisco Lopez		1,200 00
		" " " " Doct. Kraner		400 00
		" " " " W. B. Tipton		200 00
	29	" E. F. Merick paid W. P. Scott & Co		1,300 00
	29	" our d'fts in favor John Dold		1,300 00
June	3	" " J. Brice		3,100 00
	11	" R. C. Anderson's check ret'd—protested		1,000 00
		" charges on protested d'ft		3 00
	17	" H. H. Green for d'ft to Col. McFerran		100 00
	21	" our d'ft for H. C. Wethers		5,500 00
	22	" loss on mutilated currency		10 30
	27	" our d'ft fav. R. H. Gilmore		1,400 00
		" " " " M. Brunswick		3,000 00
July	2	" " " " John J. Denries		836 40
		" " " " A. Dold & Co		1,000 00
		" " " " Dittenhoeffer		1,000 00
		" " " " Francisco Lopez		1,500 00
		" " " " J. W. Thompson		1,151 00
		" " " " M. Brunswick		900 00
	5	" Mrs. G. E. Webb, m'd'se sent by express		28 40
	12	" our d'ft fav. John Hector		1,000 00
		" Frank Welsh p'd John F. Welsh		500 00
	17	" James Hourigan to pay Walkins & Co		2,100 00
	24	" our d'ft fav. Patrick Lynch		600 00
		" " " " Mrs. P. Shanley		380 00
	26	" " " " W. H. Robbins		500 00
	27	" " " " Jno. Campbell		1,600 00
860	29	" " " " Jno. Brill		450 00

		" " " " Sullivan Heath			1,900 00
		" " " " Milligan, Ferguson & Co			439 00
				$534,994 89	113,383 22
1868.		To am't bro't forward		534,994 89	
1867.					
July	29	By am't bro't forward			113,383 22
		" diff'e in gold-dust sent June 13			142 01
		" express charges on same			11 40
		" Major Staples' check returned			401 63
Aug'st	28	" our d'ft fav. Trinidad Romero			600 00
	31	" " " " S. J. Danah			790 00
Sept.	2	" " " " Trinidad Romero & Bro			630 00
		" " " " Francisco Lopez			1,000 00
		" Brunswick & Co.' bill			20 00
		" ex. charges on billiard balls, &c			9 00
		" Mrs. E. S. Roberts, cash			300 00
	4	" our d'ft fav. Trinidad Romero & Bro			475 00
		" " " " James Patterson			594 42
		" " " " Charles Enfield			150 00
		" " " " J. C. Irvin & Co			1,700 00
	5	" loss on mutilated currency			7 50
	7	" our d'ft fav. H. Matzdorff			1,000 00
		" " " " Merian & Carpenter			75 00
	11	" " " " Stapp & Hopkins			1,000 00
		" " " " Sarah W. McGuire			1,100 00
		" " " " James Daley			2,300 00
	12	" C. Deutchman, sent R. Deutchman			100 00
861	13	" our d'ft for C. E. Musick & Co			336 14
		" cash sent Gen. J. C. McFerran			100 00
	17	" type stationery for Q'm'r D'p't			179 46
	20	" our d'ft for C. W. Kitchen			90 00
		" " " " José Jacamillo			2,733 00
	23	" " " " Jack Robinson			500 00
		" A. H. Crawford sent Doct. Palmer			150 00
	27	" our d'ft for Trinidad Romero & Bro			750 00
Oct.	2	" " " " " " "			700 00
	4	" H. V. Harris, p'd for buggy			300 00
	7	" our d'ft for Philip Weizel			50 00
	8	" loss on mutilated currency			11 88
	17	" H. J. Cuniffe, p'd for pistols			487 00
		" our d'ft for L. Barard			6,000 00
		" Gilbert Haggart, p'd for mower and reaper			218 15
	24	" our d'fts for E. F. Mezick			10,500 00
		" " " " Trinidad Romero			2,000 00
	29	" " " " N. P. Brock			1,100 00
		" " " " W. H. Moore			3,000 00
		" Doct. Pettis, ex. charges on 2 boxes			10 80
		" our d'ft for Doct. John Dickson			1,000 00
	30	" W. H. Moore p'd S. F. Thayer			15 00
		" " Hillberg & Stoef			78 00
		Am'ts forward		534,994 89	156,098 61
1868.		To am't bro't forward		534,994 89	
1867.					
Oct.	30	By " " "			196,226 98
862		" Henry J. Cuniffe:			
		Paid Todd & Co., mill-fixtures			72 86
		Insurance on goods to Lavaca			426 30
		" H. V. Harris:			
		Cash	Feb'ry 19th		400 00
		"	" 21		800 00
		"	May 7		41 25
		"	" 16		200 00
		"	" 25		500 00
		"	April 6		32 50
		" C. W. Adams:			
		Cash	Feb'ry 19		100 00
		"	April "		3,000 00
		" W. C. Mitchell:			
		Cash	Feb'ry 20		2,000 00
		"	May 7		150 00
		"	" 14		100 00
		" N. Webb p'd J. E. Barnd for carpet bo't in 1863			57 00
		" Train:			
		Paid E. R. Thelkeld & Co			300 00
		D'ft Rob't Parsal			250 00
		Tho's James for forage			2,000 00
		P. Gemmer for arms			154 50
		J. Q. Watkins & Co			3,000 00
		Joseph Murphy			76 50
		J. Q. Watkins & Co			3,249 40
		" " "			750 00
		C. E. Kearny			2,502 78
863		Thelkeld & Co			920 60

		S. Smith & Co., harness		384 55
		" merchandise: Paid W. L. Ewing & Co		3,128 82
		" Interest:		
		Disc't on J. Q. Watkins & Co.' cer. depo		2 50
		" " mutilated currency		6 40
		" " Newbold's d'ft		85
		" " mutilated currency		27 30
		our d'ft for C. P. Clever		1,600 00
		" " " S. B. Watrous & Son		349 53
	31	" H. V. Harris for furniture		225 00
		Am'ts forward	534,994 89	223,035 60
	1868.	To am't bro't forward	534,994 89	
	1867.			
Oct.	31	By " " "		223,035 60
		" Merchandise:		
		Paid Cantwell & Short		959 60
		H. O. Pierce & Co.		558 95
		Hastings, Ledeoed & Co		671 00
		W'm Young & Co		1,700 00
		W. P. Scott & Co		1,800 00
		Gill & Murphy		1,500 00
		J. S. Price & Co		120 00
		Dennis & Brown		588 00
		James Beskey		339 86
		W. L. Ewing & Co		175 90
		Plant & Bro		21 00
		Slapleigh & Co		206 70
864		Rumsey & Co		85 92
		Postage-stamps		300 25
		Mellier & Scott		615 85
		W'm Young & Co		1,019 19
		H. Renard & Co		1,157 85
		W. P. Scott & Co		1,331 95
		Gill & Murphy		1,581 86
		Brown, Webber & Graham		840 30
		J. M. Brunswick & Bro		89 00
		W. L. Ewing & Co		7,800 00
		W. L. Ewing & Co		267 50
		" Expense:		
		Paid telegrams		7 45
		Insurance		300 00
		W. H. Grey		60 00
		Express charges		1 75
		Edw'd Creighton, D. C		4,581 00
		Telegram		5 70
		H. Renaued & Co		112 85
		Insurance		300 00
		E. Jaccord & Co		185 00
		" Mrs. G. E. Webb:		
		Paid R. H Franklin		10 25
		J. E. Henn		13 50
		Edwin Deat		2 10
		R. Campbell & Co		2 55
		W. C. Mitchell: Cash, June 20, 1867		1,000 00
		Am'ts forward	534,994 89	253,348 43
865				
	1868.	To am't bro't forward	534,994 89	
	1867.			
Oct.	31	By " " "		$253,348 43
		" wool adventure: Paid for 1,400 sacks		1,016 00
		" W. H. Moore: Account of children		669 50
		" W'm Kronig: Account of Miss Fannie		293 06
		" Col. J. Howe Watts: Paid Henry Bell & Son		28 00
		" Mill:		
		Paid for 5,000 sacks		1,200 00
		" W. F. Noye (gadgings, &c.)		160 45
		" Doct. De Leon: Cash, June 13, 1867		400 00
		" Gen. W. A. Nicholas:		
		Cash, June 13, 1867		300 00
		" " 29, "		215 00
		" H. V. Harris: Paid for saddle		40 00
		" Train:		
		Paid d'ft R. Parsal on W. C. M		56 60
		" Sharuluffie & James		601 26
Nov.	1	" our d'ft for Odrill de Lisle		40 00
	4	" " " " A. Dold & Co		1,486 55
		" " " " J. E. Barnard		299 25
	5	" " " " Rosenwald & Co		356 50
	6	" " " " Mrs. Ellen Martin		80 00
		" " " " H. M. Enos		600 00
866	7	" " " " R. Campbell & Co., to Weber		1,056 22
	8	" " " " J. D. Reich		12 50
	11	" " " " J. P. Shannon & Co		600 00
	13	" " " " J. Q. Watkins & Co		575 15

		" " " " H. Ganz & Bros		536 65
	20	" " " " A. Dittenhœfer		650 00
	27	" " " " Wardwell & Blake		759 54
		" " " " John L. Waters		52 25
		" " " " H. Ganz & Bros		553 25
		" " " " W. T. Steachon		900 00
	28	" " " " A. Letcher		1,000 00
	30	" cash ordered sent to England		60 00
Dec.	2	" our d'ft for Doct. John Dickson		1,554 51
	3	" " " " José Jius Revena		1,000 00
		" " " " Epifauni Baca		700 00
	5	" " " " George Maxwell		861 12
	13	" " " " Doct. John Dickson		80 00
		Am'ts forward	534,994 89	272,141 79
1868.		To am't bro't forward	534,994 89	
1867.				
Dec.	13	By " " "		272,141 79
		" d'ft on depositary Santa Fé ret'd		25 00
		" our d'ft for E. Weizel		20 00
	14	" " " " Brunswick & Hecht		160 00
	16	" " " " " "		2,585 35
	18	" " " " Doct. John Dickson		400 00
		" " " " Gill & Brinket		15 71
	20	" " " " Trinidad Romero & Bro		364 56
867		" am't for assaying metal		2 50
		" cash of Judge Watts, d'ft on Mills		300 00
	24	" our d'ft for Doct. John Dickson		1,055 73
	30	" " " " E. F. Mezick		400 00
		" am't p'd James Reaky for Kronig		225 00
		" " " M. Herzog & Co. for m'd'se		91 38
	31	" " " A. F. Hoover & Co		3,054 73
1868.				
Jan'y	3	" " " loss & exp's on mutilated currency		22 71
	13	" our d'ft for Rob't Parsal		600 00
	20	" " " " C. R. Moorehead & Co		3,000 00
	22	" expenses, &c., on mutilated currency		10 48
		" am't credited McLeat & Kendall for Doct. Weeds		250 00
	25	" our d'ft for S. R. Watrous & Son		2,866 82
	14	" cash		14 50
		" check for Doct. Peters		21 10
	31	" our d'ft for L. Mangan		100 00
Feb'y	3	" cash of J. F. Weeds for Pierre Gemitted		75 00
		" our d'ft for J. H. Spiking		600 00
		" " " " Doct. Peters		250 00
	19	" " " " Ja's Kenny		1,800 00
		" " " " Herman Stadler		2,154 65
	22	" cash rec'd of Henry Meicure		641 25
	28	" am't bill of garden seeds		11 35
Mar.	2	" cash of Doct. Kraner		500 00
		" am't paid Seizel & Robb for lamps		40 50
	6	" our d'ft for H. C. Wethers		165 75
	7	" " " " Silas Wright		200 00
		" " " " Geo. Herth		200 00
868	14	" W. H. Chick & Co		100 00
	17	" our d'ft fav. Fran'co Lopez		3,100 00
	18	" " " " G. M. Fuller		1,900 00
	23	" postage-stamps		200 00
	27	" our check for F. J. Burrows		1,400 00
		" " " " Patrick Moriaty		1,900 00
	28	" " " " R. W Barnard		1,500 00
April	2	" " " " Rosenwald & Co		1,000 00
			$534,994 89	305,465 84
1868.		To am't bro't forw'd	534,994 89	
1868.				
ril	2	By " " "		305,465 84
	17	" expense:		
		paid J. M. Brunswick & Bro		57 00
		Home Insurance Co., Conn		100 00
		J. M. Brunswick & Bro		20 00
		telegram from Geo. Briant		1 35
		freight on eastern goods		157 03
		Merchants' Union Express Co		84 40
		Chicago & Alton R. R		7 02
		Union Star Line		469 94
		telegram to F't Craig		5 00
		expense W. C. M. to Kansas City		100 00
		Chicago & Alton R. R		3 17
		drayage on E. & St. L. goods		36 85
		Union & Star Line		251 73
		fire-insurance on E. goods		100 00
		receiving & forwarding " "		100 00
		U. S. Ins. Co. on goods to Ka's City		425 00

869		telegram to Col. Casey		2 40
		ex. charges on voucher		1 00
		Revenue stamps		4 65
	"	merchandise:		
		paid Skinner, Price & Co		1,064 87
		W. A. Rawson & Co		6,391 21
		Cincin'ati Type Foundry		35 36
		Caniwell & Short		144 10
		D. P. Clarke & Co		1,554 35
		Leon Arnold & Co		7,701 88
		M. & J. H. Rosenbaum & Co		3,857 53
		J. & J. Stuart & Co		3,082 41
		H. B. Claflin & Co		15,065 50
		Rob't Campbell & Co		262 15
		Edwin Dean		133 30
		postage-stamps		300 50
		Gamean & Doizer		332 36
		G. P. Gummer		37 50
		Richoff & Tessenven		26 45
		Skinner, Price & Co		1,064 88
		J. B. Sickles & Co		866 00
		Scarritt, Curtis & Macon		194 00
		D. Douglass		488 85
		W. H. Mackham & Co		19 20
			534,994 89	350,064 77
1868.		To am't bro't fo'ward	534,994 89	
Ap'l 17	By	" " "		350,064 77
	"	merchandise:		
		paid James Sweeny		112 00
870		" C. W. Adams		313 32
		" H. V. Harris: P'd for buggy		300 00
		" Train for wagon tongues & covers		62 00
		" Doct. Peters: P'd f't on 2 boxes, Oct. 1		10 80
		" Thelkeld & Co		293 57
		" W. H. Moore:		
		paid express charges		1 00
		clothes for Jack		75 00
		" A. H. Hoover & Co		494 85
		" W. C. Mitchell: Ac. transferred		3,983 76
		" W. H. Moore		196 20
		" interest on advances to Oct. 28		240 00
		" J. S. Watts, for d'ft on Mills		300 00
		" Train for d'ft, R. Parsal p'd, S'pt. 25		400 00
		" A. T. Hoover & Co. " Oct. 7, '67		3,054 73
		" Thelkeld & Co. " " " "		629 93
		" J. Q. Walkins & Co. " " " "		1,600 00
22		" our d'ft fav. Sullivan Heath		1,000 00
		" " " " J. W. Moore		1,786 70
28		" " " " Miguel Montaya		420 00
May 1		" " " " Tho. D. Schadder		2,000 00
2		" " " " Patrick H. Bradley		1,300 00
June "		" cash of James Hunter		800 00
6		" cash ordered to be remitted to England		277 00
18		" our d'ft for Brunswick & Heath		2,500 00
		" " " " A. Dold & Co		2,500 00
19		" Moreno Ditch Co' d'f. fav. of W. C. Ripley		85 00
29		" our d'fts fav. A. Dold & Co. { 3,000 00 / 1,000 00 }		4,000 00
871		" " " " J. Rosenwald & Co		1,000 00
July 6		" " " " Michael Gallagher		2,375 00
20		" am't paid W. L. Ewing & Co		2,415 87
Aug. 5		" cash of Henry Mercure		100 00
Oct. 5		" our d'ft fav. Mes. O'diel De Lisle		50 00
Nov. 9		" Moreno Ditch Co.:		
		Fav. on London for W'm James, for $100, coin		135 00
		" " " " Peter Peterson, 44l. 4s. 8d		300 00
	merchandise:			
	Paid Lightner & Co., Nov. 1, 1867			304 00
	Am't forward		$534,994 89	385,480 50
1868.	To am't bro't forward		534,994 89	
Nov. 9	By am't bro't forward			385,480 50
	" mercha'dise:			
	paid Miller & Scott	Nov. 1, 1867		272 00
	" Shomleffer & James	" " "		914 15
	drayage	Nov. 14, 1867		50
	Shomleffer & James	" 25, "		381 06
	C. J. Felley	" " "		490 79
	H. Renard & Co	" 29, "		2,000 00
	W. L. Ewing & Co	Dec. 2, "		6,640 02
	Rob't Campbell & Co	" " "		6,000 00
	Rob't Campbell & Co	" 10, "		7,383 13
	H. Renaud & Co	" 13, "		1,000 00

		J. Wolf & Sons	"	14,	"		644 66
		Seigell & Robb	"	20,	"		40 50
		James Besky	"	30,	"		500 00
		H. Renaud & Co	"	"	"		1,105 40
872		W. P. Scott & Co	"	31,	"		2,000 00
		A. F. Shapleigh & Co	"	"	"		2,782 00
		J. B. Sickles & Co	Jan'y	4,	1868		5 00
		Cantwell & Short	"	8,	"		1,426 85
		postage-stamp	"	"	"		300 00
		W. P. Scott & Co	"	10,	"		1,819 55
		J. B. Sickles & Co	"	11,	"		202 00
		H. B. Claflin & Co	"	11,	"		7,347 85
		Rob't Campbell & Co	"	"	"		7,809 95
		J. M. Brunswick & Bro	"	22,	"		84 75
		W. L. Ewing & Co	"	23,	"		10,000 00
		Scott & Miller	"	27,	"		2,487 44
		Furman Skinner	"	29,	"		1,199 22
		Thelkeld & Co	Dec.	10,	1867		1,000 00
		W. H. Chick & Co	Nov.	11,	"		179 50
		Remer & Brown	"	20,	"		1,135 50
		Field Bro's	Jan'y	4,	1868		55 50
		Shamleffer & James	Feb'y	5,	1868		1,161 38
		J. & J. Stewart & Co	"	10,	"		621 90
		" " " "	"	14,	"		1,460 96
		" " " "	"	20,	"		2,506 00
		Shamlefre & James	"	24,	"		841 47
		E. Jaccord & Co	"	27,	"		51 87
		J. Wolf & Bro's	"	"	"		25 00
		Ja's Paster & Co	"	28,	"		79 80
		Leon. Arnold & Co	Mar.	3,	"		8,912 73
		W. A. Ransom & Co	"	3,	"		8,541 35
		R. & W. Mitchell	"	5,	"		62 00
		Clark Bro's	"	9,	"		2,099 80
		Am'ts forward				534,994 89	479,046 08
873	1868.	To am't bro't forward					
	Nov. 9	By " " "					479,046 08
		" merchandize :					
		paid Shedden, Hoyt & Co	Mar.	15,	1868		3,287 80
		M. Herzog & Co	"	14,	"		4,120 00
		Shamleffee & James	"	18,	"		1,656 82
		" " "	"	21,	"		500 00
		F. Skinner	"	28,	"		1,199 23
		Perles & Leathe	Ap'l	1,	"		150 00
		Siegel & Robb	"	"	"		11 80
		Scarrett, Curtis & M	"	"	"		120 00
		W. L. Ewing & Co	"	6,	"		1,244 43
		H. Renaud & Co	"	20,	"		3,000 00
		Cantwell & Short	"	"	"		1,026 05
		Gill & Murphy	"	"	"		2,235 34
		W. L. Ewing & Co	"	"	"		5,000 00
		revenue stamps	"	23,	"		7 50
		A. Michel	"	13,	"		215 50
		R. Campbell & Co	Mar.	9,	"		107 10
		Ed. L. Muller	"	13,	"		64 44
		Bishop & Fessenfeldt	"	"	"		73 52
		Gernett & Whittington	"	"	"		26 90
		James Sweeney	"	4,	"		224 00
		R. Campbell & Co	Feb'y	24,	"		305 10
		Secor, Swan & Co	"	8,	"		29 75
		Murphy & Fallard	Ap'l	1,	"		159 75
		Shomleffee & James	Mar.	19,	"		613 76
		W. A. Ransom & Co	Ap'l	29,	"		502 50
		Ja's S. Gray	"	"	"		155 94
		D. Hirsch & Co	May	4,	"		211 50
874		" " "	June	15,	"		230 60
		D. Douglas	May	11,	"		973 60
		Edward L. Muller	June	1,	"		127 10
		H. B. Claflin & Co	"	18,	"		10,910 50
		J. S. Hulin & Co	"	20,	"		855 53
		J. S. Price & Co	July	3,	"		1,449 40
		Leon, Arnold & Co	"	21,	"		575 75
		W. A. Ransom & Co	Aug.	1,	"		4,790 80
		Cantwell & Short	"	3,	"		6 00
		A. F. Shapleigh & Co	"	5,	"		84 40
		Koenig & Co	"	10,	"		27 36
		H. Renaud & Co	"	15,	"		1,274 82
		Shelden, Hoyt & Co	"	"	"		2,682 05
		Clark, Bro's & Co	"	"	"		1,975 00
		M Herzog	"	18,	"		3,784 90
		Shelden, Hoyt & Co	"	28,	"		2,128 31
		Am'ts forwa'd				534,994 89	537,158 93
	1868.	To am't bro't forward				534,994 89	
	Nov. 9	By " " "					537,158 93

Dec.	31	" merchandise :				
		paid W. A. Ransom	Sept.	1, 1868		4,788 40
		Henry Folson & Co	"	5, "		107 30
		Ja's S. Price & Co	"	10, "		1,449 40
		Rob't Campbell & Co	Oct.	2, "		1,238 05
		H. Renonard & Co	"	13, "		209 00
		Leon, Arnold & Co	"	16, "		4,000 00
		W. A. Ransom & Co	"	" "		2,000 00
875		Scott & Millin	"	" "		1,000 00
		W. L. Ewing & Co	"	" "		7,000 00
		R. Campbell & Co	"	" "		4,500 00
		H. Ranauod	"	" "		1,500 00
		R. Rewais	"	24, "		57 50
		Grover & Baker	"	26, "		195 90
		Richoff & Fessenfelt	Nov.	6, "		72 52
		W'm Morgan	"	12, "		112 00
		Ja's Beaky	"	13, "		600 00
		J. B. Sickles & Co	"	" "		600 00
		Field Bro's	Nov.	18, 1868		160 88
		Waine, Cheder & Co	Nov.	" "		23 75
		Henry Folsom & Co	"	" "		26 50
		Scarrett, Carter & M	"	23, "		148 50
		Hooker & Co	"	" "		250 00
		Waine, Cheever & Co	"	" "		78 55
		H. Rananord & Co	"	25 "		1,500 00
		G. & W. Todd & Co	"	" "		225 75
		Herbert Bell	"	" "		512 80
		J. M. Brunswick	"	27, "		311 50
		Shapleigh & Co	"	" "		8 50
		W. L. Ewing & Co	"	30, "		8,500 00
		Shapleigh & Co	"	" "		167 00
		Hastings, L. & Co	Dec.	1, "		1,700 00
		J. B. Sickles & Co	"	" "		1,291 20
		C. J. Tilley	"	2, "		637 70
		V. Gruber	"	4, "		140 00
		Scott & Millier	"	5, "		1,127 77
		Shapleigh & Co	"	" "		2,000 00
876		Ja's Beakey	"	" "		400 00
		Grimsley & Co	"	" "		319 50
		J. Wolff & Sons	"	19, "		600 00
		R. Campbell & Co	"	21, "		5,880 60
		Am'ts forward			534,994 89	592,599 50
1868.						
Dec.	31	To am't bro't forward			534,994 89	
		By " "				592,599 50
		" merchandise :				
		paid Scott & Millin	Dec.	9, 1868		1 35
		H. E. Dimick	Nov.	29, "		1 25
		Balance			57,607 21	
					592,602 10	592,602 10
1868.						
Dec.	31	By balance due R. C. & Co				$57,607 21

On which said account is the following endorsement, to wit:

(L.) Filed in my office this 11th day of July, 1870. W'm Breeden, clerk.

"M."

Merchandise in ac. with W. H. Moore, Adams & Co.

877	1866.			
	July 9	To mill, for 10 sacks flour	150 00	
	24	" S. B. Watrous & Son, 1 box soap	15 00	
	27	" mill, for 20 sacks flour	300 00	
Aug.	2	" Q. M. Dept. for deduction on glass	8 00	
	10	" cash paid for 10 sacks flour	100 00	
	18	" " for sugar, coffee, & candles	44 00	
	23	" C. H. Walker, for 2 shirts rec't'd	7 50	
	29	" cash for yeast-powders	120 00	
		" 1 wagin of Gaudaloupe Galigos, sold Henry Baldwin	40 00	
	31	" N. Webb & Co., amount furnished teamsters in G. Davis' train	196 62	
		" for 1 bbl vinegar	50 00	
Sept.	11	" Brunswick & Hecht, cash for tobacco	513 25	
Oct.	1	" H. H. Green, error in invoice	67 50	
		" mill, 15 sacks flour on 27 Sept.	210 00	
	2	" W. H. Moore & Co., provisions of Capt. Lauer	177 00	

		" mill, for 2 sacks flour per G. Martin	30 00	
		" cash, p'd freight on 312 lbs. matches	31 20	
		" W. H. Moore & Co., for two doz. matches	126 00	
		" " " N. H. Smith's Q. M. order	35 20	
	12	" cash p'd V. Romero for sheep	100 00	
	16	" " " commissary for two bbls. whiskey	362 95	
		" mill, for 1 sack flour	8 00	
	18	" " " 10 " "	80 00	
	19	" cash for Q. M. orders counted in sales	287 67	
	22	" R. Campbell & Co., for billiard balls, &c	38 50	
		" cash p'd commissary for 2 bbls. whiskey	354 41	
	24	" Q. Mr's D'p't, deduction on Eno paper	30 40	
	25	" cash for 10,011 lbs. corn	650 71	
878		" mill, for 10 sacks flour	80 00	
	26	" Russell & DeHague, error in bill	28 00	
	27	" mill, for 5 sacks flour	40 00	
		" cash p'd for tobacco	79 50	
		" mill, for 1 sack of flour	8 00	
Oct.	30	" " " 6 " "	48 00	
	31	" " " 10 " "	80 00	
		" " " 1,000 lbs bran	20 00	
Nov.	2	" cash p'd comm'ss'y for 2 bbls. whiskey	356 54	
	3	" " " J. N. Irvin, for Y. powders	250 50	
	5	" mill, for 20 sacks flour	160 00	
		" N. Webb & Co., for 5 gal's L. oil	12 50	
	12	" J. F. Johnson	3 50	
		Am't forward	5,300 45	
	1866.			
Nov.	12	To am't bro't forward	5,300 45	
	13	" cash p'd for 2 bbls. whiskey	354 41	
	14	" mill, for 20 sacks flour	160 00	
	20	" " " 25 " "	200 00	
	21	" " " 3 " "	24 00	
	24	" Russell & DeHague, (short on bill)	5 00	
	26	" C. H. Walker, clothing returned	47 19	
		" mill, for 15 sacks flour	120 00	
	27	" S. B. Watrous & Son, (ribbon returned)	1 50	
Dec.	1	" cash paid J. Brice f't on 18,359 lbs	2,294 87	
	3	" W. H. Moore & Co., ch'd to Capt. Farnsworth	40 00	
	8	" mill, for 30 sacks flour	240 00	
	18	" cash paid J. M. Thatcher	94 00	
	26	" C. W. Adams, for one mil' vest	10 00	
879	28	" mill, for 1 sack flour	8 00	
	29	" J. E. Farmer, am't ch'g'd to B. Parsal	7 25	
	1867.			
Jan'y	7	" mill, for 25 sacks flour	200 00	
		" cash p'd Staob & Bro	250 17	
	11	" mill, for 1 sack flour	8 00	
	19	" J. E. Farmer, wood to Santiego Peralto	25 00	
	23	" cash for can' fruits	56 50	
	24	" W. H. Moore & Co., for am't stock on hand July 2d, 1866	182,656 71	
	26	" mill, for 20 sacks flour	160 00	
	28	" " " 2 " "	16 00	
	31	" E. Tipton, for 1 shawl ret'd	15 00	
		" Kroenig, diffe'e, on shoes	50	
Feb'y	6	" cash p'd J. N. Irvin for stove & P. caps	78 00	
	12	" mill, for 20 sacks flour	160 00	
	15	" Story & Co.,		
		Am't charged to Mullins	10 50	
		" " " Welsh	9 00	
	18	" Brunswick & Hecht, 19 cans oysters	285 00	
Mar.	1	" mill, for 20 sacks flour	160 00	
	13	" " " 50 " "	400 00	
	18	" Rob't Campbell & Co.:		
		For Lightner & Co's bill	126 00	
	21	" mill, for 50 sacks flour	400 00	
	28	" W. H. Moore & Co.:		
		For Ant'o Martin' ac., petit ledger	47 25	
		" cash p'd W. DeLong's due-bill, cr. m'd'se	100 00	
April	2	" J. N. Irwin, for 50 gal's C. oil	125 00	
	5	" H. M. Enos, for Z. Stoab & Bro's bill	621 95	
880		" John Dold, for C. Rothchilds	423 00	
	15	" J. A. LaRue, for 2 kegs retur'd	5 00	
		" mill, for 20 sacks flour	160 00	
		Am t forward	195,805 25	
	1867.			
April	15	To am't bro't forward	195,805 25	
	16	" mill, of 4 sacks flour	32 00	
	24	" " " 2 " "	16 00	
		" N. Bond, for 32 M. shingles	288 00	
	25	" Russell & DeHague, for 1 doz. brooms	7 50	
	29	" mill, for 21 sacks flour	168 00	
	30	" Ja's Thomas, for corsets and ledger	26 00	

May	2	" Q. M'r D'p't., deduction on paper, &c	4 00	
	9	" Geoffrain & Desmouos, tobacco	261 50	
	11	" mill, for 200 lbs. bran	4 00	
	13	" " " 20 sacks flour	160 00	
	14	" cash p'd commissary for whiskey	317 94	
	18	" Rob't Campbell & Co., p'd sundry bills	4,203 79	
		" mill, for 1 sack flour	8 00	
	22	" " " 20 " "	160 00	
		" " " 200 lbs bran	4 00	
		" C. W. Kitchen, for 10 boxes tobacco	296 40	
	23	" W. H. Moore & Co.: For am't collected of W. Boyle	43 00	
	31	" mill, for 15 sacks flour	120 00	
June	3	" " " 4 " "	32 00	
		" James Brice for bill m'd'se	852 00	
	5	" M. Desmaries & Co., tobacco	219 30	
881		" J. N. Irwin, candles	156 00	
		" mill, for 20 sacks flour	160 00	
	11	" " " 1 " "	10 00	
	12	" J. E. Farmer, am't cha'g'd to Crawford	25 40	
	15	" cash paid J. W. Moore for fr't on 13, 732 lbs m'd'se	1,373 20	
		" mill, for 2 sacks flour	20 00	
		" S. B. Watrous & Son, am't to Jesus Martin	35 45	
	20	" mill, for 29 sacks flour	203 00	
	22	" " " 6 " "	42 00	
	24	" " " 15 " "	105 00	
	26	" Russell & DeHague, error in ac	21 37	
July	6	" " " " for 2 shawls	15 00	
	9	" cash p'd for pipes	79 50	
		" E. F. Mezick, for freight	238 36	
	15	" cash for bacon	80 00	
	17	" " " coffee	40 00	
		" mill, for 10 sacks flour	80 00	
	19	" H. Martzdorff, deduction on 124 lbs. lard	2 48	
		" mill, for 3 sacks flour 1-10, 2-6	22 00	
	20	" W. B. Tipton, mx' cards & buttons	27 00	
	27	" mill, for 5 sacks flour	40 00	
		" " " 200 lbs bran	4 00	
		Am't forward	205,808 44	
1867.				
July	27	To am't bro't forward	205,808 44	
	29	" mill, for 25 sacks flour	200 00	
	30	" cash, p'd exp. ch'g's on goods	6 60	
	31	" mill, for 2 sacks flour	16 00	
		" V. Romero, deduction on prints	85 07	
882	Aug. 1	" cash, for coffee	55 10	
	2	" train for freight on m'd'se from Kansas City	16,783 20	
		" train, freight to Sumner	284 07	
	5	" cash for 3 anvils	3 00	
	9	" " " bacon	30 00	
	12	" V. Romero, for 130 sheep	260 00	
		" mill, for 1 sack flour	8 00	
	13	" " " 20 " "	160 00	
	16	" " " 22 " "	176 00	
		" " " 475 lbs bran	9 50	
	17	" " " 2 sacks flour 1-10, 1-6	16 00	
		" " " grinding corn	2 25	
	19	" " " 1 sack flour	8 00	
	23	" cash p'd Felipe Terales, f't	12 00	
		" Luis Martin, freight	58 65	
		" cash p'd Flor Martin, freight	58 65	
	24	" mill, for 60 sacks flour	420 00	
	27	" cash for brooms	8 00	
		" Brunswick & Hecht, for matches	126 00	
		" W'm Kronig, for blankets, 60.00, & lumber 14.91	74 91	
		" mill, for 25 sacks flour	175 00	
		" " " 25 lbs flour to Trugillo	2 00	
		" " " 50 sacks to Watrous & Son	18 75	
	31	" cash p'd Elsberg & Amberg for varnish	17 50	
Sept.	2	" " " for bacon	26 00	
	3	" " " " driving sheep	5 00	
	4	" " " " J. C. Irwin, candles & tobacco	355 00	
883	5	" mill, for 35 sacks flour	245 00	
		" J. F. Johnson for 123 lbs. beans	12 30	
	7	" Cash p'd H. Martzdorff for liquors	1,516 00	
	9	" mill, for 2 sacks flour	14 00	
	12	" L. P. Osmer for chickens	24 00	
		" mill, for 26 sacks flour	183 00	
		" " " 21 " 2d flour	106 00	
	17	" W. H. Moore & Co., for old wagons of José G. Gallegos	70 00	
	18	" cash p'd Rosenwold & Co	56 00	
		Am't forward	212,494 99	
1867.				
Sept.	18	To am't bro't forward	212,494 99	

	20	" W. H. Moore & Co.: A'c Martin Seiler	1,014 15	
	21	" Joseph Kinsinger, 10 lbs. tobacco ret'd	20 00	
		" mill, for 1 sack flour	7 00	
	23	" " " 20 " "	140 00	
		" " " 500 lbs bran	10 00	
	25	" " " 20 sacks flour	140 00	
	30	" S. B. Watrous & Son for wool sacks	26 00	
		" mill, for 12 sacks flour	84 00	
		" " " 2 " 2d do	12 00	
Oct.	5	" " " flour bran, grindings, &c., for sundry persons	1,499 75	
		" " " 20 sacks flour at store	140 00	
		" " " 3 " 2d do.	18 00	
	7	" " " 20 sacks flour	140 00	
	10	" V. Romero, for fa. potato's	160 00	
884		" train, for mule-shoes	30 00	
	14	" V. Romero, for sheep	150 00	
	18	" cash, for sund's by H. V. Harris	37 00	
		" mill, " 20 sacks flour	140 00	
	19	" A. Dold & Co., for 5 bbls. whiskey	687 50	
	21	" mill, for 300 lbs. bran	6 00	
	23	" mess, for 12½ " butter	12 50	
	24	" " " 5 " "	5 00	
		" mill, for 1,000 lbs. bran	20 00	
	26	" Capt. Coin, bal in petit ledger	24	
		" Lieut. Lawson, " " "	50	
	29	" 16 sacks flour to mill	113 00	
		" mill, 15 sacks, 2d flour	75 00	
	30	" Rob't Campbell & Co., paid sundry bills	38,609 95	
		" mill, for 500 lbs. bran	10 00	
	31	" " " 170 " "	3 40	
		" " " 2 sacks flour	14 00	
		" Rob't Campbell & Co., paid sundry bills	23,730 68	
Nov.	1	" mill, for 20 sacks flour	140 00	
		" " " 500 lbs. bran	10 00	
		" train, " 1 wagon sold	45 00	
	4	" cash, p'd Johnson & Koch' bill	144 00	
		" Spiegelberg Bro	45 00	
		" J. E. Banord	299 25	
		" A. Dold & Co., am't invoice	799 05	
		Am't forward	281,032 96	
1867.				
Nov.	5	To am't bro't forward	281,032 96	
885		" cash p'd J. Rosenwold & Co,' bill	356 50	
	13	" mill, for 20 sacks flour	140 00	
		" " " 100 lbs. bran	20 00	
	14	" Gilbert Haggart, for am't transf'd from petit ledger	86 25	
	19	" V. Romero, for 2 doz. shoes short	30 00	
		" Dold & Brunswick, bal on shoes	33 00	
		" Vicente Romero, for am't to W'm Hallenbush	35 00	
		" " " D. W. Gallagher	45 00	
		cash p'd Dold & Brunswick	1,200 00	
	20	" Mrs. G. E. Webb, 1 check ret'd	35 00	
		" mill for 500 lbs. bran	10 00	
	21	" " " 10 sacks flour	70 00	
	23	" M. G. Shock, 1 p'r pants ret'd	6 00	
Dec.	5	" cash p'd G. Maxwell, freight	832 00	
		" mill, for 2,000 lbs. bran	40 00	
	10	" M. G. Shock, 1 vest returned	4 00	
	13	" train, for freight from Kans. City, on 149,230 lbs. m'd'se	14,923 00	
		" cash paid for rations	75 00	
	14	" mill, for 20 sacks flour	140 00	
		" Brunswick & Hecht, sundry bills	1,375 94	
	16	" W'm Kronig, for vegetables for Col. Barnard	158 00	
	17	" Stapp & Hopkins, for 1 case boots not rec'v'd	90 00	
	18	" Rev. J. Woart, for candles	13 50	
	20	" L. P. Osmer, for cap returned	3 00	
886		" Trinidad Romero, freight	20 00	
	21	" mill, for 25 sacks flour	175 00	
	23	" cash, p'd ex. ch'gs on 2 boxes	114 50	
		" E. Tipton & Co. for 7,129 lbs. beans	332 68	
	30	" cash p'd Seligman for toys	20 00	
		" R. Campbell & Co., p'd M. Herzog & Co	91 38	
		" mill, for 21 sacks flour	147 00	
		" " " 1,000 lbs. bran	20 00	
	31	" A. F. Hoover & Co., am't bill	1,561 03	
1868.				
Jan'y	2	" Capt. Davis for whiskey not rec'd	12 00	
	3	" Rob't Campbell & Co., for ex. & loss on mutilated money	22 71	
	4	" cash p'd Dold & Brunswick for 2 counter-scales	47 00	
		" Geo. Herth, for 1,220 lbs. bacon	366 00	
	8	" Dold & Brunswick, bill m'd'se	2,113 27	
		Am't forward	305,796 72	

1868.				
Jan'y	8	To am't bro't forward	305,796 72	
	11	" cash, p'd freight from Las Vegas	40 00	
		" Dold & Brunswick, liquors	4,165 00	
	14	" cash, p'd ex. charges on sacks	4 00	
	18	" mill, for 1 sack flour	7 00	
	20	" " " 1,000 lbs. bran	20 00	
	16	" cash p'd Spiegelberg for sacks	97 50	
	21	" Tob Witmer, am't to J. May in petit ledger	24 00	
	23	" cash, p'd sundry bills for hats	762 00	
	25	" " " ex. charges on candles	10 00	
	28	" Dold & Brunswick for candles, 25 lb	150 00	
887	29	" cash p'd Staab & Bro. for pears, &c	895 50	
	31	" mill for 24 sacks flour	168 00	
Feb'y	1	" Dold & Brunswick, invoice Jan'y 31	27 00	
		" cash p'd Rosenwald & Co., for stockings	12 25	
		" H. H. Green, am't to C. Williams, P. ledger	301 00	
	5	" Tob. Witmer, " " " F. Welsh, P. ledger	5 00	
	6	" mill, for 25 sacks flour	175 00	
	10	" cash p'd Seligman for varnish	14 00	
	13	" mill, for 250 lbs. bran	5 00	
	15	" " " 1,000 " "	20 00	
		" Russell & De Hague, am't to C. Lucero	24 00	
	17	" Dold & Brunswick, matches & ginger	147 00	
	20	" E. F. Mezick, for garden seeds	12 50	
	21	" " " " "	3 00	
	27	" cash, p'd ex. charges on mutilated money	3 00	
		" mill, for 1 sack flour—order	7 00	
	29	" " " 32 sacks flour	224 00	
		" " " 2,300 lbs. bran	46 00	
Mar.	2	" cash p'd G. W. Gallager, am't to Q. M. employés	52 00	
		" R. Campbell & Co., for lamps of Seigel & Co.	40 50	
		" cash, p'd ex. charges on lamps	32 50	
		" mill, for 20 sacks flour	140 00	
		" " " 700 lbs. bran	14 00	
	3	" cash, am't ch'd to Q. M. employés	90 00	
	6	" " p'd Waters for cigars	143 00	
		" " ch'd to Q. M. employés	125 00	
		" " p'd J. Dold for chairs	36 00	
888		" Dold & Brunswick, candles & tobacco	145 00	
		" H. C. Wethers, for 182 s'ks salt	22 75	
	7	" mining adventure, deffice in invoices	74 92	
	9	" cash, am't charged in petit ledger	53 45	
	10	" N. S. Davis, box sarsaparilla not rec'd	8 50	
	12	" mill, for 1 sack flour to J. Perea	7 00	
	17	" Wm Kronig, for 18 y'ds carpet	40 50	
		Am't forward	314,190 59	
1868.				
Mar.	17	To am't bro't forward	314,190 59	
	21	" cash p'd m'd'se ch'd in petit ledger	45 00	
	23	" R. Campbell & Co., for postage-stamps	200 00	
	27	" cash p'd m'd'se, ch'd in P. ledger	85 00	
	28	" mill, for 20 sacks flour	140 00	
		" " " 849 lbs. bran	16 98	
	30	" Dold & Brunswick, coal-oil	25 00	
April	4	" cash, am't ch'd in petit ledger	85 00	
	10	" " " " " Q. M. book	35 00	
	15	" Tob. Wetmer, am't to T. F. Failey	9 10	
	17	" R. Campbell & Co., paid sundry bills	42,784 39	
	18	" Miss E. Woart, 1 p'r corsets ret'd	2 50	
	20	" ca h p'd Dr. Roemond, bal. on petit ledger	113 92	
	21	" W'm Kronig:		
		am't to Frank Welsh	18 75	
		" " Martin Silor	16 50	
		" " Fortune Weaver	21 00	
889		" S. B. Watrous & Son, am't to M. Silor	71 53	
		" mill, for 10 sacks flour	70 00	
		" " " 1 " 2d "	5 00	
	22	" cash p'd Sullivan Heath for am't to teamsters	1,500 00	
		" Moreno Ditch Co., f't	10 54	
		" mill, for 1,000 lbs. bran	20 00	
	23	" S. B. Watrous & Son, m'd'se to Salazar	7 00	
		" Tob. Witmer, boots ret'd	12 00	
	27	" cash p'd B. & H. for bitters	20 00	
	30	" " " teamsters & charged in train-book	335 00	
May	1	" W. G. Shock, m'd'se ret'd	9 93	
	2	" cash p'd for cigars	15 00	
		" mill, for flour to sundries	40 00	
		" W. G. Shock, watch and chain ret'd	18 00	
		" Mrs. G. E. Webb, 1 p'r shoes ret'd	5 00	
	5	" mill, flour, &c., to sundries	66 75	
		" " for 15 sacks flour to store	105 09	
		" " " 340 lbs. bran	6 80	
	8	" E. F. Mezick p'd sundry bills	138 50	

	9	" mill, for 10 sacks flour	60 00	
		" " " 1,000 lbs. bran	20 00	
		Am't forward	360,324 78	
1868.				
May	9	To am't bro't forward	360,324 78	
	11	" E. Tipton, children's shoes ret'd	1 00	
890	12	" Tob. Witmer, for 1 banjo	20 00	
	18	" mill, for 25 sacks flour	137 50	
		" " " 1,500 lbs. bran	30 00	
	22	" train, for ox yokes, chains, &c	25 50	
	29	" mill, for 20 sacks flour	120 00	
	30	" " " 8 " "	48 00	
June	1	" " " 25 " "	150 00	
	9	" " " 20 " "	120 00	
	10	" " " 6 " " sund's	42 00	
		" " " 1 " "	6 00	
	20	" Moreno Ditch Co., am't included in invoices in Stobs, &c	133 17	
	23	" Rev. J. Woart, for candl's, &c	21 50	
	24	" Capt. S. Ovenhine, for carriage & harness to Miss Woart	350 00	
	25	" Capt. Shoemaker, shoes ret'd	3 50	
	26	" Rev. J. Woart, champagne ret'd	42 00	
	29	" Vicente Romero, for 4,666 lbs. corn	139 98	
July	2	" cash p'd Desmaries & Co., for steel	35 00	
	3	" Moreno Ditch Co., for syrup	29 40	
	6	" W. G. Shock, am't to F. Wester	15 00	
		" "	47 00	
	7	" mill, flour, &c., to sund's	348 00	
	11	" Ant'o Guetenes, freight	142 18	
		" José G. Gallegos	66 31	
		" mill, for 800 lbs. bran	16 00	
	14	" Moreno Ditch Co., am't invoices, July 10 & 11th	1,818 33	
891	16	" mill, for 20 sacks flour	120 00	
		" M. Rudulph, for hats & spoons	27 50	
		" cash p'd sundry train-men, charged in train-book	94 00	
	18	" cash p'd G. Estrado, for corn	247 90	
	21	" " " T. Lucero, fr't from Harker	250 00	
	23	" Rev. J. Woart, for candles	4 50	
	27	" V Romero, for sheep	75 00	
	28	" Cha's Miller, diffe'ce on hat	2 00	
	29	" Dold & Brunswick, bill 24 July	258 26	
		" cash p'd for 1,599 lbs. corn	32 00	
	31	" train, for 1 wagon to Ditch Co	250 00	
		Am't forward	365,593 31	
1868.				
Aug't	1	To am't bro't forward	365,593 31	
	3	" cash p'd for bacon	22 50	
	5	" H. H. Green, ch'd to E. Davis	14 25	
		" S. B. Watrous & Son, for bill groceries	157 00	
	7	" cash p'd premium on gold	15 50	
	8	" " " W'm Grant, for shingles	32 00	
		" " " E. C. Cook, " "	160 00	
	10	" mill, for flour, &c., to sund's	494 00	
		" " " 25 sacks of flour at store	250 00	
		" Brunswick & Hecht, coal-oil	25 00	
	14	" cash, p'd ex. charges on m'd'se	57 75	
	17	" H. H. Green, ch'd to E. Davis	25 00	
		" Brunswick & Hecht, L. & C. oil	30 00	
892	17	" Dold & Brunswick, sund's	92 40	
	20	" M. Rudulph, for lumber	851 38	
		" Rev. J. Woart, for candles	2 25	
	25	" cash ch'd to E. Davis in petit ledger	114 00	
	26	" Th's Post, transferred to Q. M. book, petit ledger	50 00	
	28	" cash paid for coffee & bacon	24 00	
		" mill, for 1 sack flour	6 00	
	31	" V. Romero, for sheep	52 50	
Sept.	2	" V. Romero, his ac. on Weldon	130 50	
	4	" do., for 100 sheep	150 00	
		" mill, for 50 sacks flour	300 00	
	5	" " " " flour, &c., to sund's	661 50	
		" Rev. J. Woart, to candles	4 50	
	7	" cash p'd for 7 tents	10 50	
	9	" N. M. Wool Factory, for carpet	165 50	
	10	" mill, for ac. on M. Silor	451 94	
		" cash for bacon	35 00	
	11	" " " "	30 00	
	14	" mill, for 50 lbs. flour to P. Herrera	3 00	
		" cash p'd for 180 lbs. bacon	54 00	
	15	" Rev. J. Woart, for candles	2 25	
		" mill, for 25 sacks flour	150 00	
	21	" cash for vinegar	13 00	
	23	" W'm Kronig:		
		For 56 y'ds carpet	112 00	
		100 lbs. corn-meal	5 00	

		" Rev. J. Woart, for 278 lbs. corn	5 56	
	24	" Moreno Ditch Co., for 1 overcoat to J. Sanders	7 00	
893	25	" mill, for 1 sack flour	6 00	
	28	" Doct. Peters, for 2 cows	70 00	
		" mill, for 20 sacks flour	120 00	
			370,456 09	
1868.				
Sept.	28	To am't bro't forward	370,456 09	
	30	" José Jaramillo:		
		For 30 sacks sugar, 25	750 00	
		10 " coffee	560 00	
		" W. H. Moore: For sheep to Graham & Co.	300 00	
		" mill, for 3 sacks flour	18 00	
Oct.	3	" " " flour, &c., to sund's	408 00	
		" cash p'd for bacon	62 16	
	5	" Moreno Ditch Co.: For m'd'se furnished train	174 69	
		" cash p'd for bacon	29 12	
		" Mrs. E. Webb, 1 p'r shoes, ret'd	6 00	
		" mill, for 50 sacks flour	300 00	
	6	" cash p'd M. Brunswick, for sugar	680 00	
		" " " teamsters, and charged in train-book	525 00	
	7	" E. N. Howison: For 2 wagons sold	195 00	
	8	" cash paid for 1 wagon, charged in petit ledger to F. Lefevre	90 00	
		" Rev. J. Woart, for 411 lbs. corn	12 33	
	10	" cash for 82 lbs. bacon	22 96	
894	13	" E. N. Howison, for 1 wagon sold	100 00	
		" Rev. J. Woart, for candles	2 25	
	16	" Brunswick & Hecht, for sugar	84 00	
		" cash p'd J. Moore, & charged in Q. M. book	50 00	
	17	" Lieut. Wightman: For am't ch'd to Co. B, 37	34 00	
	22	" cash p'd Geo. Davis, am't deposited June 12, '68	105 00	
		" " for 214 lbs. bacon	60 00	
	27	" N. M. Wool Factory: For invoice flannel, &c.	247 90	
	31	" J. E. Banard & Co., for am't to petit ledger	48 37	
Nov.	9	" Rob't Campbell & Co.: Am't p'd sundry bills	151,982 35	
	10	" mill, for 30 sacks flour	180 00	
	11	" J. F. Johnson: For 25,287 lbs. oats	758 61	
		" Geo. Pancoast: For 22,661 lbs. oats	679 83	
		" Juan José Tafoya: For 10,244 lbs. oats	307 32	
	12	" mill, for 1,000 lbs. bran	20 00	
		Am't forward	529,248 98	
1868.				
Nov.	12	To am't bro't forward	529,248 98	
	14	" cash p'd ex. charges on coal-oil from Vegas	3 00	
895	20	" mill, for 20 sacks flour	120 00	
	28	" Rev. J. Woart, 1 bot. wine	2 50	
Dec.	3	" mill, for 25 sacks flour	150 00	
	11	" N. M. Wool Factory, for bal. in petit ledger	96 65	
	15	" Capt. Davis, m'd'se returned	3 25	
	17	" M. Bloomfield, " "	2 50	
	21	" cash p'd Co. "B," & charged in petit ledger	28 00	
	22	" mill, for 25 sacks flour	150 00	
	23	" Graham & Co., for 50 sheep	75 00	
	26	" W'm Kronig, 1 p'r boots returned	6 00	
	31	" W. H. Chick & Co., for fr't charged, &c., on goods	2,286 11	
		" mill, for flour, &c., to sund's	433 00	
		" Brunswick & Hecht, am't sundry bills	331 94	
		" W. H. Moore & Co.:		
		Paid H. E. Demick & Co., Oct. 6, '66	14 70	
		For stamps " " "	18 80	
		Ex. of W. C. Mitchell to Kansas City	150 00	
		J. F. Beaky, Oct. 6, 1866	70 50	
		Shapleigh & Co., " 8, "	1,967 80	
		For tobacco, " " "	40 04	
		J. Q. Watkins " " "	1,500 00	
		L. & C. Speck " 30, "	52 20	
		Ja's Gamean, Nov. 1, "	466 37	
		D. Douglass, " " "	596 00	
896		Skinner, Price & Co., Nov. 1, 1866	1,630 16	
		Miller & Scott, " " "	449 95	
		Insurance, " " "	132 50	
		W'm Kronig & Co. " " "	23 00	
		Express charges, " " "	7 30	
		For stationery, Dec'r 7, "	204 26	
		" Rob't Campbell & Co., am't paid sundry bills	46,240 47	
		" ac'ts transferred from petit ledger, July 2, 1866	1,229 52	
		" " " " soldiers, " " "	202 48	
		Am'nt forward	587,932 94	
1868.				
Dec.	31	To am't bro't forward	587,932 94	

1866.		CR.		
July	31	By am'nt to sund's during month		3,414 57
		" cash sales " "		11,881 00
Aug.	31	" " " " "		16,221 00
		" am't to sund's " "		2,307 90
Sept.	30	" " " " "		5,969 61
		" cash sales " "		27,121 00
Oct.	31	" " " " "		25,180 25
		" am't to sund's " "		14,805 80
Nov.	30	" " " " "		4,299 89
		" cash sales " "		18,824 53
Dec.	31	" " " " "		16,214 86
897		" am't to sund's " "		7,831 30
1867.				
Jan'y	31	" " " " " "		5,946 42
		" cash sales " "		8,206 00
Feb'y	28	" " " " "		9,724 00
		" am't to sund's " "		2,787 01
March	31	" " " " "		1,786 56
		" cash sales " "		30,873 52
April	30	" " " " "		9,980 00
		" am't to sund's " "		2,198 92
May	31	" " " " "		2,510 92
		" cash sales " "		11,455 94
June	30	" " " " "		14,631 00
		" am't to sund's " "		24,774 89
July	31	" " " " "		13,554 83
		" cash sales " "		26,134 00
Aug.	31	" " " " "		9,772 72
		" am't to sund's " "		5,211 94
Sept.	30	" " " " "		5,227 15
		" cash sales " "		8,378 00
Oct.	31	" " " " "		11,821 00
		" am't to sund's " "		3,124 26
Nov.	30	" " " " "		30,394 89
		" cash sales " "		19,509 52
Dec.	31	" " " " "		35,787 00
		" am't to sund's " "		5,233 02
1868.				
Jan'y	31	" " " " " "		10,274 54
			587,932 94	464,359 76
898				
1868.				
Dec.	31	To am't bro't forward	587,932 94	
Jan'y	"	By " " "		464,359 76
		" cash sales during month		1,736 86
Febr'y	29	" " " " "		9,086 00
		" am't to sund's " "		2,439 73
Mar.	31	" " " " "		3,617 36
		" cash sales " "		11,872 22
April	30	" " " " "		12,824 50
		" am't to sund's " "		5,878 71
May	31	" " " " "		16,088 86
		" cash sales " "		10,761 00
June	30	" " " " "		8,234 00
		" am't to sund's " "		31,694 57
July	31	" " " " "		11,430 29
		" cash sales " "		8,249 00
August	31	" " " " "		7,145 00
		" am't to sund's " "		5,114 07
Sept.	30	" " " " "		6,184 73
		" cash sales " "		9,251 00
Oct.	31	" " " " "		6,604 00
		" am't to sund's " "		10,615 14
Nov.	30	" " " " "		3,809 77
		" cash sales " "		5,794 00
Dec.	31	" " " " "		2,852 00
		" am't to sund's " "		2,425 11
		To balance	80,134 73	
			$668,067 67	668,067 67
1868.				
Dec.	31	By balance		$80,134 73

899 On which said account is the following endorsement, to wit: "M." Filed in my office this 11th day of July, 1870. W'm Breeden, clerk.

"N."

W. H. Moore & Co. in ac. with W. H. Moore, Adams & Co.

1866.				
July	25	To am't to J. Anders' credit	11 00	
	31	" " deduction on hospital ac	3 00	
Aug'st	11	" " ac. Juan José Salazar, petit ledger	34 63	
Sept.	28	" cash	3,000 00	
Oct.	6	" N. S. Davis, am't assumed	1,694 99	
	8	" cash p'd following due-bills:		
		For Jesse Stillwell, bal	25 00	
		Dan Dunworth	135 00	
		Adam Schelegelmicho, bal	145 00	
		Thomas Dowling "	100 00	
		T. J. Barnum	160 00	
		J. Ivasbury, bal	175 00	
		Serg't Michael Finn	300 00	
900		John Williams, bal	200 00	
		Joseph Daniels, 2 notes	600 00	
		" cash	816 16	
		" do. in d'fts	35,000 00	
		" cash p'd due-bill for M. Lycett	500 00	
		" am't Capt. Fox ac. in petit ledger	290 27	
	22	" cash p'd due-bill for Geo. Davis	100 00	
	23	" " " " " James Conway	2,000 00	
	27	" " " " " G. F. Davis	55 00	
	29	" " " bal. " " Tho's C. Scudder	50 00	
Nov.	9	" " " on " " Michael Ryan	50 00	
	10	" " " " " Serg't John Ford	290 00	
	15	" " " bal. " " Michael Ryan	102 12	
	13	" " " " " Michael Burns	325 00	
	19	" " paid train-hands	377 35	
	20	" " " " "	106 00	
		" " p'd bal. due-bill for E. McCaffry	100 00	
	26	" " " " " " " Michael Ryan	160 00	
Dec.	3	" " " " " " " Jas. Brice	4,641 65	
		" am't paid Rob't Campbell & Co	1,665 40	
	18	" cash p'd due-bill for Geo. F. Darxer	100 00	
	20	" " " " " " W'm Delong {200 00, 100 00, 50 00}	350 00	
	31	" " " " " " S. Vee {460 00, 170 00}	630 00	
1867.				
Jan'y	25	" J. N. Irvin, am't ac. transferred	9,784 29	
		" C. H. Walker	51 96	
	28	" Francis Welsh	827 05	
	30	" Capt. Farnsworth, bal. ac	15,465 93	
Feb'y	9	" cash p'd due-bills for M. Burke {400 00, 800 00, 100 00}	1,300 00	
901	Mar. 28	" Ant'o Martin, for 3 mo's services	90 00	
	April 2	" cash, p'd due-bill for E. McCaffry	100 00	
		Am't forward	81,911 80	
1867.				
April	2	To am't bro't forward	81,911 80	
	8	" cash p'd José M. Valdez	10 00	
	9	" " " due-bills for Lewis Pediser {350 00, 100 00}	450 00	
May	18	" Rob't Campbell & Co.:		
		Paid J. Wolff & So', note & int	1,451 76	
		Hastings R. Co	2,243 16	
		Cantwell & Short	1,205 00	
		" Rob't Campbell & Co., am't remitted in Nov., 1866	25,000 00	
		" Doct. Shout, am't ac	2,517 75	
June	5	" Har'y Mumford, ac. transferred	786 09	
	13	" Col. H. M. Enos " "	25,000 00	
	27	" Gullime Estrado, bal. ac	320 29	
July	2	" cash, p'd due-bill for John Devin	200 00	
	5	" E. H. Bergman, bal. ac	104 31	
	11	" cash p'd due-bill for John Hector	500 00	
	13	" " " S. B. Elkins, att'y fees	30 00	
Aug'st	29	" Bernard & Withers, ac. transferred	1,487 20	
Sept.	13	" m'd'se, A. M. Adams, petit ledger, on ac	139 35	
		" Major McClove	989 72	
		" A. H. Crawford	315 00	
	16	" Martin Mullins, bal. ac	144 43	
Sept.	25	" Sullivan Heath, ac. transferred	2,035 00	
		" John Dold, " "	24,722 87	
902	30	" W. B. Tipton, " "	1,161 99	
	Oct. 1	" Geo. Davis	215 00	
Dec.	7	" cash, p'd due-bill for W. H. Drake	125 00	
	14	" Brunswick & Hech	529 19	

1868.				
Jan'y	29	" John Dold, for sundries in 1861	90 00	
April	23	" S. B. Watrous & Son, ac. transferred	74 01	
July	6	" cash, p'd due-bills Jas. M. Gallerhger { 1,100 00 / 230 75 / 240 00 }	1,570 75	
Sept.	29	" H. V. Harris, ac. transferred	1,250 73	
Dec'r	21	" D. P. Rankin	407 74	
			176,988 14	

CR.

1866.				
July	11	By hospital, for 12 chickens		9 00
Oct.	1	" cash		1,000 00
	2	" m'd'se, provisions of Capt. Loner		177 00
	8	" 72 doz. matches		126 00
		" am't N. H. Smith's Q. M. order		35 20
		" cash		173 50
	9	" cash of H. Rathage, ac. in ord. book		27 00
	12	" " " Capt. R. D. Russell		43 45
	13	" " " Capt. Montoya		13 25
		Am'ts forward	176,988 14	1,604 40
1868.				
Dec		To am't bro't forward	176,988 14	
1866.				
Oct.	13	By " " "		1,604 40
		" cash of Col. Watts for collections		16 75
		" " " Maj. J. Thompson		219 00
		" " " Lieut. G. W. Campbell		471 34
903	16	By cash for d'ft on R. C. & Co. for H. L. Newman		60 00
	20	" " of Capt. Fox		202 91
		" " " Maj. N. Quintana		319 55
Nov.	28	" " " A. C. Coburne		196 15
	29	" Jack Chandler, bal. ac.		811 92
Dec.	3	" m'd'se, am't ch'd to Capt. Farnsworth		40 00
	8	" cash of Lieut. Hodge		126 00
	12	" Albert Herman, ac. in petit ledger		17 12
	18	" cash collected of Lieut. Martines		291 80
	20	" " in check No. 662 of H. M. Enos		1,000 00
1867.				
Jan'y	10	" E. F. Mezick		99 50
	24	" m'd'se, am't stock July 2d, 1866		182,656 71
	31	" P. P. Searcy, am't ac.		128 38
Feb'y	2	" W. G. Searcy		114 75
	6	" cash of J. H. Irwin		1,440 19
	9	" " " for Maj. Staples' d'ft on depository		8 20
		" " " " small checks in safe		234 00
	12	" Juan Perea, am't ac.		156 75
	20	" F. L. Roberts for 1 sack sugar		50 00
	21	" cash of O. K. Chittenden		59 00
Mar.	19	" " " Ceverino Gonzales		100 00
	20	" " " F. Samples		441 00
	28	" m'd'se, Ant'o Martin, ac. in petit ledger		47 25
April	18	" Enoc' Tipton		221 62
	30	" James Thomas, for am't we owe		440 92
May	23	" m'd'se, am't of W. Boyle		43 00
June	17	" cash of Lieut. C. Porter		100 00
	July 10	" Mard Palaneo, am't ac.		138 88
904	29	" James Thomas		147 00
	Aug. 23	" Luis Martin		254 00
		" cash of Flor. Martin		12 50
Sept.	3	" Gen. J. H. Carleton		2,081 43
	6	" M. G. Bishop		771 34
		" James D. May		275 25
		" Harvey Whitehill		25 25
		" Henry Blattman		415 50
		" Shafer & Bro.		121 50
	12	" Jesus M'a Montoya		151 00
		" L. P. Osmer		82 00
	13	" C. B. Magruder		82 00
	17	" José G. Gallegos		206 28
			176,988 14	196,482 15
1868.				
Dec'r	31	To am't bro't forward	176,988 14	
1867.				
Sept.	17	By am't bro't forward		196,482 15
		" old wagon sold		70 00
	20	" m'd'se, ac. Martin Seiler		1,014 15
Oct.	17	" cash in check 593, H. M. Enos		500 00
	29	" Sam'l Brice, bal. ac.		673 50
	31	" R. Campbell & Co., rec'd on note L't Russell		129 71

Nov.	7	" Frank Weber, bal. ac.		720 25
Dec.	13	" Geo. G. Brown, " "		39 57
	16	" Brunswick & Hecht, for flour in '66		590 00
1868.				
Jan'y	27	" Geo. Pancoast, am't his ac.		445 63
		" " " " F. Samples		2,012 91
April	23	" S. B. Watrous, ac. transferred		268 54
905		" J. B. Watrous, ac. transferred		268 83
June	22	" cash of J. B. Vaux		42 50
July	23	" J. B. Miller, ac. in Q. M. book		63 75
August	10	" Andres Nelson, am't ac.		217 65
Dec.	21	" J. F. Johnson, ac. transferred		1,037 32
		" J. A. Ls Rue, " "		569 28
		" L. B. Maxwell, " "		33 50
		" Gasper Gurulé		225 45
		" C. W. Adams		6,448 00
	31	" merchandise:		
		p'd H. E. Dimick ... Oct. 6, 1866		14 70
		for stamps		18 80
		ex.. W. C. Mitchell to Kansas City		150 00
		James Beaky ... Oct. 6, 1866		70 50
		Shapleigh & Co ... " 8, "		1,967 80
		for tobacco ... " " "		40 00
		J. Q. Walkins & Co ... " " "		1,500 00
		L. & C. Speck ... " 30, "		52 20
		Ja's Garneau ... Nov. 1, "		466 37
		D. Douglass ... " " "		596 00
		Skinner, Price & Co ... " " "		1,630 16
		Miller & Scott ... " " "		449 95
		insurance ... " " "		132 50
		W'm Kronig & Co ... " " "		23 00
		express charges ... " " "		7 30
		for stationary ... Dec. 7, "		204 26
		" E. H. Bergman, ac. transferred		208 62
		" ac's tranferred from petit ledger		1,229 52
906		" ac's transferred from soldiers		202 48
		Bal. due W. H. M. & Co	44,228 17	
			$221,216 31	221,216 31

On which said account is the following endorsement, to wit:

"N." Filed in my office this 11th day of July, 1870. W'm Breeden, clerk.

"O."

Mr. W. H. Moore in ac. with W. H. Moore, Adams & Co.

1862.				
July	31	To m'd'se during month	$216 51	
Aug'st	"	" " " "	123 60	
Sept.	30	" " " "	168 08	
		" cash " "	16 00	
Oct.	31	" m'd'se " "	143 06	
		" cash " "	2,100 00	
Nov.	30	" " " "	300 00	
		" m'd'se " "	80 51	
Dec.	31	" " " "	104 40	
		" cash " "	250 00	
907 1867.				
Jan'y	31	" cash during month	750 00	
		" m'd'se " "	55 66	
		" N. S. Davis " "	200 00	
		" L. P. Osmer " "	500 00	
Feb'y	28	" Geo. Panevost " "	80 00	
		" cash " "	6 40	
		" m'd'se " "	64 15	
March	31	" " " "	141 29	
		" Brunswick & H. " "	28 00	
		" cash " "	34 30	
April	30	" " " "	50 00	
		" Col. H. M. Enos " "	59 83	
		" m'd'se " "	156 58	
May	31	" " " "	88 88	
		" cash " "	1,068 00	
June	30	" " " "	180 00	
		" J. T. Johnson " "	364 53	
		" merch'd'se " "	80 95	
July	31	" " " "	493 22	
		" H. M. Enos " "	2,655 00	

		" cash " "		178 50	
Aug'st	31	" " " "		712 59	
		" J. T. Johnson " "		130 00	
		" m'd'se " "		82 00	
Sept.	30	" " " "		109 50	
		" cash " "		115 25	
Oct.	31	" " " "		117 50	
		" Rob't Campbell & Co. " "		762 50	
908		" m'd'se during month		57 37	
Nov	30	" " " "		246 97	
		" Capt. Davis " "		364 00	
		" cash " "		296 85	
Dec	31	" " " "		20 00	
		Am't forward		13,731 98	
1867.					
Dec.	31	" To am't bro't forward		13,731 98	
		" m'd'se during month		117 08	
		" Brunswick & H. " "		438 35	
1868.					
Jan'y	31	" Capt. Davis " "		225 83	
		" cash " "		41 75	
		" m'd'se " "		126 92	
Feb'y	29	" " " "		78 61	
		" cash " "		469 75	
Mar.	31	" B. P. Searcy " "		50 00	
		" m'd'se " "		151 30	
April	30	" " " "		139 97	
		" Geo. Herth " "		79 00	
		" R. Campbell & Co. " "		272 20	
		" S. B. Watrous & Son " "		1 00	
		" cash " "		50 00	
May	31	" " " "		27 35	
		" Geo. Herth " "		46 35	
		" m'd'se " "		296 48	
June	30	" " " "		118 35	
		" Geo. Herth " "		39 15	
		" cash " "		398 10	
909	July 31	" cash " "		1,000 00	
		" Geo. Herth " "		17 80	
		" m'd'se " "		115 05	
Aug'st	31	" " " "		301 69	
		" cash " "		276 50	
Sept.	30	" " " "		471 00	
		" Frank Welsh " "		537 50	
		" Col. Wiley " "		275 00	
		" m'd'se " "		101 84	
Oct.	31	" " " "		101 18	
		" Gorham & Co. " "		24 90	
		" cash " "		13,082 15	
Nov.	30	" " " "		11 00	
		" m'd'se " "		97 81	
Dec.	31	" " " "		164 21	
		" cash " "		32 00	
		" Gorham & Co. " "		58 45	
		" W. H. Chick & Co. " "		842 51	
				$34,410 11	

CR.

1866.				
July	11	By 1 cow to hospital		$50 00
Sept.	6	" 5 cows " 3—60.00; 2—50.00		280 00
Oct.	8	" cash		1,017 25
Nov.	11	" "		20 00
1867.				
Jan'y	8	" "		1,930 54
		Am'ts forward	34,410 11	3,297 79
910				
1867.		Am'ts forward	34,410 11	3,297 79
Jan'y	10	By am't E. F. Mezick		40 00
	17	" Tho's F. Roberts		300 00
		" cash		601 50
Feb'y	2	" W. T. Searcy		45 60
April	"	" cash		50 00
May	8	" "		276 50
		" C. B. Magruder		75 00
	22	" Capt. Inman		82 50
	30	" cash		160 00
June	13	" Col. H. M. Enos		100 37
July	29	" wool adventure		1,888 64
Sept.	10	" cash		75 00
	14	" "		60 00
Nov.	11	" "		75 00
Dec.	2	" "		100 00
1868.				
Mar.	5	" "		200 00

	17	" George Heith		247 70
	23	" cash		1,118 00
Ap'l	27	" "		500 00
May	5	" "		50 00
July	2	" Doct. D. C. Peters		1,000 00
Sept.	30	" Gorham & Co		300 00
Dec.	"	" C. G. Parker & Co		649 39
		" Lieut. Satarios		505 75
	31	" train-hands		598 50
		" Bob Parsal		150 00
		" José Trujillo		45 00
911		" J. A. LaRue		205 00
		" Brunswick & Hecht		295 00
		" Rob't Tamer		270 00
		" expense		300 00
		" Moreno Ditch Co		100 00
		Balance		20,647 87
			$34,410 11	34,410 11
1868.				
Dec'r	31	To balance	$20,647 87	

On which said account is the following endorsement, to wit:

"O." Filed in my office this 11th day of July, 1870. W'm Breeden, clerk.

P.

Mr. W. C. Mitchell in ac. with W. H. Moore, Adams & Co.

1867.				
Oct.	30	To Rob't Campbell & Co		2,250 00
"	31	" " " "		1,000 00
1868.				
April	17	" " " "		3,983 76
May	8	" E. F. Mezick		100 00
				7,333 76

On which said account is the following endorsement, to wit:

912 "P." Filed in my office this 11th day of July, 1870. W'm Breeden, clerk.

And afterwards, to wit, on the 20th day of August, A. D. 1870, the following objections were filed by the complainant in the above-entitled cause; which said objections are in the words and figures following, to wit:

G. E. HUNTINGTON, ADM'X, &C., & D. L. HUNTINGTON,
vs,
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

Objections taken by complainants to the draft report of the master in chancery, filed herein, under order of the court.

First. The master has failed to make any account of the sum of $20,000, testified to by H. V. Harris, as being the amount drawn out of the firm of W. H. Moore & Co. by said defendant Moore, above all credits given him on the books, when the same should have been considered and treated as collectible assets.

913 In all which particulars the complainants object to the master's report.

S. B. ELKINS &
WHEATON,
For Comp's.

On which said paper is the following endorsement, to wit:

G. E. Huntington, adm'x, &c., & D. L. Huntington vs. William H. Moore & William C. Mitchell. Objections.

Filed in my office this 18th day of August, 1870.

W'M BREEDEN,
Master in Chancery.

Filed in my office this 20th day of August, 1870.

W'M BREEDEN, *Clerk.*

And on the same day, to wit, on the 20th day of August, A. D. 1870, the following objections were filed to the master's report by the defendants; which are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON & DAVID L. HUNTington, her husband,
vs.
914 WILLIAM H. MOORE & WILLIAM C. MITCHELL. } In chancery.

Objections taken by the defendants to the draft report of William Breeden, esq., master in chancery of this court, made in this cause and filed in the clerk's office the 13th day of August, A. D. 1870, and referred for re-examination.

FIRST OBJECTION.

That the said master has stated in his report that "the complainant charges that Nathan Webb had an interest of one-third in all the business of the firm of W. H. Moore & Co. This allegation is denied by the defendants, but, in the opinion of the undersigned, it is sustained by the pleadings and proofs. No written contract, agreement, articles of copartnership, or other written or record evidence on this point was produced before me. The defendants deny that any exists, or ever existed. I consider the fact that Webb had a one-third interest in said business is sufficiently established, and, therefore, find that such was the fact," but that the said master erred in coming to the conclu-
915 sion that the fact of Nathan Webb, deceased, having a one-third interest in the firm of W. H. Moore & Co. was sufficiently established, as the answer of William H. Moore and William C. Mitchell positively deny that allegation of complainant's bill, which said denial has not been overcome by the satisfactory testimony of two opposing witnesses, or of one witness, corroborated by other circumstances and facts, which give to it a greater weight than the positive denial of that fact in the answer of the said W. H. Moore and W. C. Mitchell.

Overruled.

W'M BREEDEN, *Master.*

SECOND OBJECTION.

The said master erred in considering as proof in this case those portions of the evidence of William R. Shoemaker and Joab Houghton, which, in themselves, show to be only hearsay testimony, of a nature excluded by the laws of evidence.

Overruled.

W'M BREEDEN, *Master.*

THIRD OBJECTION.

The said master, in his report, has stated that "the books of the above-named firms are found to be in an exceedingly bad condition, and many of the accounts contained in said books appear to be entirely unintelligible. Entries embracing hundred's of thousands of dollars,
916 and including extensive business transactions for a period of several years, have been made in said books in one and the same day, and, in many instances, such entries of large sums appear to have been made from three to five years after the transactions to which they refer were completed according to the proofs. Most if not all the important accounts material to be understood and considered on said reference are absolutely unintelligible to the most experienced and competent bookkeepers. The condition of said books, as developed by the examination made by me and the said accountant, with the testimony of Henry V. Harris, Robert Campbell, and Samuel B. Wheelock, taken in chief in this cause, and to which reference is respectfully made, is sufficient, in my opinion, to totally invalidate, discredit, and render of no value or assistance in the consideration of the said matters referred, the said books of account, and I have so treated them, and have relied entirely upon the pleadings, exhibits, and proofs in the cause in arriving at the conclusions hereinafter stated," when, in fact, there is no evidence
917 to warrant the said master to come to such a conclusion. The entries made in said books were honestly made, manifesting bona-fide transactions of said firm, and the fact that some of them were not made at the time the transactions to which they relate does not invalidate them, nor proves that such transactions did not take place, or were not made in good faith.

Allowed, and words objected to omitted from report.

W'M BREEDEN, *Master.*

FOURTH OBJECTION.

The said master erred in charging the amount of $78,979.16, as being the amount of goods, wares, and merchandize on hand as assets of the firm of N. Webb & Co. at the time of the death of N. Webb, when the answer of W. H. Moore, upon which said estimate is based, and which stands uncontradicted, furnishes positive proof that from the sales of said goods, wares, and merchandize, so estimated as above stated, only the amount of $28,982.06 was realized, and which said last-mentioned amount stands credited on the books of W. H. Moore & Co. to the account of N. Webb & Co.

Overruled.

W'M BREEDEN, *Master.*

FIFTH OBJECTION.

The said master erred in charging as assets of the firm of N.
918 Webb & Co. fifty per cent. of the sum of $76,105.03, debts due and owing to the said firm of N. Webb & Co., inclusive of the indebtedness of N. Webb & wife, when the uncontradicted answer of the said defendants clearly show' that of that amount only the sum of $1,811.00 were collected by said defendants, which amount was credited on the books of W. H. Moore & Co. to the account of N. Webb & Co.

Overruled.

W'M BREEDEN, *Master.*

SIXTH OBJECTION.

The said master erred in not deducting from the amount of $76,105.03, in the foregoing objection specified, the amount of $15,311.81, expense account, $4,571.66, train account, and $1,289.29, account of A. G. Gaige, who is dead, and his estate utterly insolvent, making in all, $21,172.96. (See Exhibit "A" filed with defendants' answer.)

Allowed in part, and deductions made.

W'M BREEDEN, *Master.*

SEVENTH OBJECTION.

The said master erred in charging as assets of said firm the sums of $10,258.75, $8,116.70, and $2,000.00, these amounts having been credited on the books of W. H. Moore & Co. to the account of N. Webb & Co.

Overruled.

W'M BREEDEN, *Master.*

EIGHTH OBJECTION.

919 The master erred in making it appear that the amount of $7,158.58 is due the estate of N. Webb, deceased, from the firm of N. Webb & Co., when the uncontradicted answer of the defendants show that the firm of N. Webb & Co., at the time of the death of the said Nathan Webb, was insolvent and indebted to the firm of W. H. Moore & Co. in the sum of $35,019.70, as will more fully appear from the following statement:

Amount realized from the sale of goods, wares, and merchandize	28,982 06
Amount realized from debts due N. Webb & Co	1,811 00
Brazito tract of land	9,697 34
Total assets	$40,490 40
Debts due and owing by N. Webb & Co	61,462 61
Loss	$20,972 21

The above shows a loss to N. Webb & Co. of $20,972.21, one-third of which, $6,990.74, added to $28,342.57 due by N. Webb & wife, on the books of N. Webb & Co., shows an indebtedness of N. Webb, dec'd, to N. Webb & Co. of $35,233.31, instead of there being due to the estate of N. Webb from N. Webb & Co. $7,158.58, as per the master's report.

Overruled.

W'M BREEDEN, *Master.*

NINTH OBJECTION.

920 The master erred in his said report by not deducting the sum of $190,361.38, amount of debts paid by the said defendants which were credited for W. H. Moore & Co. during the life-time of said Nathan Webb, as appears by reference to Exhibit "B," filed with the answer of said defendant W. H. Moore.

Overruled.

W'M BREEDEN, *Master.*

TENTH OBJECTION.

There being nothing due the said complainant by the said defendants on account of the said Nathan Webb, deceased, the calculating and adding of interest by the master in his report was and is erroneous.

Overruled.

W'M BREEDEN, *Master.*

ELEVENTH OBJECTION.

In this case the complainants' bill is based upon a written partnership alledged to have been made between William H. Moore and William C. Mitchell and Nathan Webb, and the non-producting of the writing is accounted for by alledging that if not lost or destroyed, is in the possession of the defendants' Moore & Mitchell, who, in their answer under oath, deny the existence of any written article ever having been made by the parties, and that, in the verbal contract of partnership, they alledge that $\frac{1}{6}$ & not $\frac{1}{3}$ was the interest of Nathan Webb in the Fort Union branch of the business. There is no evidence anywhere to
921 give the slightest foundation to suppose any written contract ever was made, and the question whether in the absence of all proof as to the existence or loss or destruction of a written instrument parol proof can be adduced, a decree had upon a contract not in writing should be called to the attention and referred to the consideration of the court to determine whether the bill shall not be dismissed, unless leave is given the complainants to withdraw *her* replication to the answer of defendants, and amend their bill so as to conform to the facts proved, as it is impossible to recover on a written contract when no written contract existed. And if a recovery is asked on the contract-verbal admitted in the answer, the necessity of requiring the complainants to amend their bill is plain, obvious, and undoubted.

Overruled. Master no power to consider.

W'M BREEDEN, *Master.*

TWELFTH OBJECTION.

The complainant claims a decree against the defendants as sole heir of the personal estate of her husband, Nathan Webb, under the laws of Texas, and as the administratrix of his estate in Texas, and in Mora County, New Mexico. The bulk of the personal property in dispute is situated in Mora County, New Mexico, and by the laws of New
922 Mexico one-half belongs to Sarah Webb, mother of Nathan Webb, which facts should be stated in the report and referred to the court for adjudication.

All of which are respectfully submitted to the master in chancery.

BENEDICT, CLEVER & WATTS,
Solicitors for Def'ts.

On which said objections *are* the following endorsement, to wit:

G. E. Huntington & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Objections to master's report. Filed in my office this 18th day of August, 1870.

W'M BREEDEN,
Master in Chancery.

Filed in my office this 20th day of August, 1870.

W'M BREEDEN, *Clerk.*

And afterwards, to wit, on Monday the 22d day of August, A. D. 1870, being the seventh day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings
923 were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X &C., AND David L. Huntington, her husband, *vs.* WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now come the said defendants, by their counsel, and move the court to grant them thirty days' time in which to file exceptions to the master's report in this cause; which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X., &C., & DAvid L. Huntington, *vs.* WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now comes the said defendants, W'm H. Moore and W'm C. Mitchell, by Clever, Benedict & Watts, their attorneys, and move the court for time to file exceptions to the report of the master in chancery, filed by said master in chancery at 6½ o'clock p. m., on Saturday the
924 20th of August, A. D. 1870—a copy of which report was not received until the day of August, A. D, 1870; and the said defendants now move the court for one month's time to file exceptions to said report and argue the same before the court.

WATTS, CLEVER & BENEDICT,
Att'ys for Def'ts.

(83 rule of Supreme Court, page 65.)

On which said motion is the following endorsement, to wit:

Gertrude E. Huntington'adm'x &c., & David L. Huntington, vs. W'm H. Moore & W'm C. Mit'hell. Chancery. Motion for time to file exceptions to rep't of master, filed 20th August, 1870. Filed in open court this 22d day of August, 1870. W'm Breeden, clerk.

And the same being argued by counsel and the court being sufficiently advised in the premises, overrules said motion.

And at the same time with the foregoing motion and in support thereof were filed the following affidavit and Exhibit "A," which
925 are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & DAvid L. Huntington, *vs.* WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

TERRITORY OF NEW MEXICO,
County of Mora:

John S. Watts, Charles P. Clever, and Kirby Benedict, upon their oaths state that they are the attorneys of W'm H. Moore and W'm C. Mitchell, defendants in a suit in chancery pending against them, in

which Gertrude E. Huntington, administratrix of the estate of Nathan Webb, deceased, and David L. Hun[illegible]e complainants. Said affiant' would further state, the report o[illegible]ne master in chancery in this case filed on the 13th day of August, 1870, was on the day of August, 1870, on motion of the defendants, referred to the master in chancery for review of said report and the hearing of objections, and said objections were fully heard before said master on the day of August, A. D. 1870, and taken under advisement by said master in chancery
926 until six and a half o'clock p. m., on Saturday the 20th of August, 1870; a copy of which said notice, served on John S. Watts after he had retired for the night, is hereby made a part of this affidavit marked as Exhibit "A," herein. The said affiants further state that one of said attorn*ies*, John S. Watts, on the morning of August 21, 1870, applied to said master in chancery, W'm Breeden, who is also the clerk of the United States district court for the 1st judicial district in the Territory of New Mexico, in which Mora County is situate, for a copy of said report, filed by him at 6½ o'clock p. m., 20th of August, A. D. 1870, which the said master in chancery at once proceeded to prepare, but was not ready to deliver nor was it received by said affiants until Monday the 22d day of August, A. D. 1870, at about 10 o'clock a. m. Said affiants would further state that they cannot with justice to the interest and rights of the said defendants prepare and argue the exceptions they wish to file and have argued and decided by the court before going into a final hearing in this case on to-day or to-morrow, and said affi-
927 ants ask the court to award to said defendants the entire month fixed by the 83 rule of the Supreme Court of the United States to file exceptions to said report. Said affiants would further state that the change made in the report of the 13th of August, 1870, by the report of the 20th of August, 1870, is such as not only materially to change the report of the master first made herein, but also to establish a different basis upon which said present report stands, from that of the first report of the master filed herein, which imposes upon said affiants the duty of re-examining the books, accounts, bill', answers, and exhibits before presenting their exceptions to their report, which will not only embody the objections made before the master in chancery, but others rendered prudent and proper by the amended condition of the report of 13th of August, 1870, by the report of 20th of August, 1870. Said affiants would further state that at the time said report was filed on the 20th of August, 1870, at 6½ o'clock p. m., a motion was pending and unde-
928 termined by the court to strike out and suppress certain portions of the depositions of Joab Houghton and W'm R. Shoemaker, objected to before the commissioner taking said depositions, and which objections to said portions of said depositions w*as* renewed before the court by said motion to strike out and suppress said portions of said depositions so objected to. Said affiants, for the reasons above stated and set forth, ask*s* for all the time allowed by law, or the rules of chancery practice, to consider, prepare, file, and argue exceptions to the report of the master in chancery so recently filed in this voluminous, intricate, and important cause, in which the interest of said defendants is involved to the extent of $97,596.19 *cents;* and further saith not, except that this affidavit for time is not made for delay.

JOHN S. WATTS.
KIRBY BENEDICT.

(Makes oath to the above to the best of his knowledge, information, and belief.)

C. P. CLEVER.

Subscribed and sworn to before me this 22nd day of August, A. D. 1870.

W'M BREEDEN, *Clerk.*

929 On which said affidavit is the following endorsement, to wit:

G. E. Huntington, adm'x, &c., & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Affidavit. Filed in open court this 22nd day of August, 1870. W'm Breeden, clerk.

MORA, N. M., *August 20th*, 1870.

Hon. JOHN S. WATTS.

D'R SIR: I have to inform you that I completed and filed in the clerk's office, at 6½ o'clock p. m., to-day, my report in the cause of Gertrude E. Huntington, administratrix, &c., and D. L. Huntington, her husband, vs. W'm H. Moore and William C. Mitchell. The report shows $97,596.19 due the complainants. I allowed your objection as to the train account and expense account of N. Webb & Co., and omitted to comment in any way upon the books of account. In brief, I allowed your third
930 and, in part, your sixth objection, and overruled all the others.

Very respectfully,

(Signed) W'M BREEDEN,
Master in Chancery.

On which said exhibit is the following endorsement, to wit:

Exhibit "A." Gertrude E. Huntington, adm'x, &c., & David L. Huntington vs. W'm H. Moore & W'm C. Mitchell. Chancery. Copy of notice of report being made and filed. Filed in open court this 22nd day of August, 1870. W'm Breeden, clerk.

And afterwards, to wit, on Monday, the 22d day of August, A. D. 1870, being the 7th day of the August (A. D. 1870) term of the said district court for the said county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

931 GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., & David L. Huntington, her husband, *vs.* W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now come the said defendants, by their counsel, and move the court to direct a trial by jury of the issue as to the extent of Nathan Webb's interest in the business of the firm of W. H. Moore & Co.; which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington, *vs.* W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now comes the said defendants, W'm H. Moore and William C. Mitchell, by their attorneys, Clever, Benedict and Watts, and move the court to direct an issue at law to try the disputed facts as to whether the interest of Nathan Webb, deceased, in the firm of W'm H. Moore & Co., of Fort Union, Mora County, Territory of New Mexico, in the business of said firm of W'm H. Moore & Co., is a one-third interest as

alledged in said bill, or an eighth interest as alleged in said an-
932 swer of said respondents, the truth of which disputed fact the said defendants ask to be tried by a jury.

CLEVER, BENEDICT & WATTS,
For Defendants.

On which said motion is the following endorsement, to wit:

Gertrude E. Huntington, adm'x, &c., & David L. Huntington, vs. William H. Moore, W'm C. Mitchell. Chancery. Motion to refer issue of fact to jury for trial. Filed in open court this 22nd day of August, 1870. W'm Breeden, clerk. Clever, Benedict & Watts for def'ts.

Which motion being argued by counsel, and the court being sufficiently advised in the premises, overrules said motion.

And now come the said defendants, by their counsel, and move the court to grant them such time as the court shall think reasonable to file their exceptions to the master's report herein; which said motion is in the words and figures following, to wit:

G. E. HUNTINGTON, ADM'X, &C., & D. L. Huntington
933 *vs.* } Chancery.
MOORE & MITCHELL.

The said defendants move for such reasonable time as the court shall see fit to make to file exceptions to master's report, a copy of which said report is not yet received.

CLEVER, BENEDICT & WATTS.

On which said motion is the following endorsement, to wit:

G. E. Huntington, administratrix, &c., & D. L. Huntington, vs. W. H. Moore & W. C. Mitchell. Motion. Filed in open court this 22nd day of August, 1870. W'm Breeden, clerk.

Whereupon the court orders that the said defendants have until two o'clock p. m. to-day to file their exceptions to the report of the master in this cause.

And afterwards, to wit, on Monday, August the 22nd, A. D. 1870, being the 7th day of the August (A. D. 1870) term of the said district court for the said county of Mora, the following proceedings were
934 had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

The motion of the said defendants, by their counsel, to suppress certain portions of the depositions of Joab Houghton, filed as evidence in this cause, having been argued and submitted on a former day of this term, and the court having then taken said motion under advisement, and being now sufficiently advised in the premises, sustains said motion as to question and answer No. 4, and as to question and answer

No. 5, except as to conversation, which took place in presence of the defendant, William H. Moore, at Fort Union, and overrules said motion as to the other portions of said deposition specified in said motion.

And, also, the motion of the said defendants, by their counsel,
935 to suppress certain portions of the deposition of William R. Shoemaker, filed as evidence in this cause, having been argued and submitted at a former day of this term, and the court having then taken said motion under advisement, and being now sufficiently advised in the premises, sustains said motion as to questions and answers No. 4 and No. 12, and that portion of answer No. 11 which relates to cash capital put into the firm of W. H. Moore & Co. by Nathan Webb, and overrules said motion as to the other portion of question and answer No. 11, specified in said motion.

And afterwards, to wit, on the 22 day of August, A. D. 1870, the following exceptions to the master's report were filed by the complainant in the above-entitled cause, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & D. L. Huntington,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } In chancery.

Exceptions taken by complainant to the report of William Breeden,
936 *esq., master in chancery, made and filed in this cause, on the 20th day of August, A. D. 1870.*

FIRST EXCEPTIONS.

That the evidence of Henry V. Harris, witness for the defendants, on page 19 of the same, shows that the defendant William H. Moore drew out of the firm of William H. Moore & Co., the sum of twenty thousand dollars above all credits given him on the books. No account of this amount is taken by the master, when the same was and is and should have been considered as collectable assets of the firm of W. H. Moore & Co., by said master.

In all which particulars the complainants doth except to the master's report, and humbly appeal therefrom to this honorable court.

WHEATON & ELKINS,
For Comp.

On which said exceptions are the following endorsements, to wit:

G. E. Huntington, adm'x, &c., & D. L. Huntington vs. William
937 H. Moore & William C. Mitchell. Exceptions to master's report. Filed in my office this 22d day of August, 1870. W'm Breeden, clerk.

And on the same day, to wit, the 22nd day of August, A. D. 1870, the following exceptions to the master's report were filed by the defendants in the above-entitled cause, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., & David L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } In chancery.

Exceptions taken by the defendants to the report of William Breeden, esq., master in chancery of this court, made in this cause, and filed in the clerk's office the 20th day of August, A. D. 1870.

FIRST EXCEPTION.

That the said master has stated in his said report that: "That the complainant charges that Nathan Webb had an interest of one-third in all the business of the firm of W. H. Moore & Co. This allegation is denied by the defendants, but, in the opinion of the undersigned, it is sustained by the pleadings and proofs. No written contract, ar-
938 ticles of agreement, articles of copartnership, or other written or record evidence on this point was produced before me. The defendants deny that any exist or ever existed. I consider the fact that Webb had a one-third interest in said business is sufficiently established, and therefore find that such was the fact." But the said master erred in coming to the conclusion that the fact of Nathan Webb, deceased, having a one-third interest in the firm of W. H. Moore & Co. was sufficiently established, as the answer of William H. Moore and William C. Mitchell positively deny that allegation of complainant's bill, which said denial has not been overcome by the satisfactory testimony of two opposing witnesses, or of one witness, corroborated by other circumstances and facts which give to it a greater weight than the positive denial of that fact in the answer of the said William H. Moore and W. C. Mitchell which is duly sworn to by said defendants.

SECOND EXCEPTION.

The said master erred in considering as proof in this case those
939 portions of the evidence of William R. Shoemaker and Joab Houghton, which in themselves show only to be hearsay testimony, of a nature excluded by the laws of evidence, and when a motion was pending to suppress said evidence.

THIRD EXCEPTION.

The said master erred in charging the amount of $78,979.16 as being the amount of goods, wares, and merchandise, on hand as assets at the time of the death of N. Webb, when the answer of W. H. Moore, upon which said estimate is based, and which stands uncontradicted, furnishes positive proof that from the sale of said goods, wares, and merchandise so estimated as above stated, only the amount of $28,982.06 was realized, and which said last-mentioned amount stands credited on the books of W. H. Moore & Co., to the account of N. Webb & Co. The report of the master is erroneous, because predicated upon the supposed value of the goods, wares, and merchandise on hand at the date of the death of N. Webb instead of the actual assets received.
The said master should have only charged the said W. H. Moore
940 and W. C. Mitchell with $28,982.06, the actual assets received by them, instead of $78,979.16, making a difference in the available assets of said N. Webb & Co. of $49,997.10.

FOURTH EXCEPTION.

The said master erred in charging as assets of the said firm of N. Webb & Co. fifty per cent. of the sum of $76,105.03, debts due and

owing to the said firm of N. Webb & Co., inclusive of the indebtedness of Webb and wife, when the uncontradicted answer of the said defendants clearly show' that, of that amount, only the sum of $1,811.00 has been collected by said defendants, which amount was credited on the books of W. H. Moore & Co. to the account of N. Webb & Co.

FIFTH EXCEPTION.

The said master erred in charging as assets of said firm the sums of $10,258.75, $8,116.78, and $2,000.00, these amounts having been credited on the books of W. H. Moore & Co. to the account of N. Webb & Co., and if now charged to W. H. Moore & Co. as assets of said firm for which W. H. Moore & Co. are held responsible and compelled to account, the said sum would be twice paid and accounted for, once on the
941 books of W. H. Moore & Co., where said sums are credited to N. Webb & Co. in part liquidation of their indebtedness, and now on the report of the master in chancery, where the credit is refused and said sums charged against them to form a basis for a decree for that amount.

SIXTH EXCEPTION.

The amount of Nathan Webb's $\frac{1}{3}$ of the indebtedness of the firm of N. Webb & Co., amounting to the sum of $35,019.20, as shown by the books and by the answer of W. H. Moore should be charged to the estate of N. Webb, amounting to the sum of $11,673.

SEVENTH EXCEPTION.

The weight of the legal evidence before the master in chancery proved that the interest of Nathan Webb, deceased, in the business of the firm of W. H. Moore & Co., at Fort Union, New Mexico, was $\frac{1}{8}$ instead of $\frac{1}{3}$, and the report of the said master should have fixed the interest of the said Nathan Webb, deceased, at $\frac{1}{8}$ instead of $\frac{1}{3}$, for which reason the basis of calculation is wrong, and the report erroneous as to said $\frac{1}{3}$ interest in the business of W. H. Moore & Co., as said report should have been made and based upon $\frac{1}{8}$ and not $\frac{1}{3}$ interest in said firm.

942 EIGHTH EXCEPTION.

It appearing by the evidence in this case—by the sworn answers of the defendants—that Sarah Webb, mother of Nathan Webb, deceased, was alive and residing in Burlington, Iowa, and desired to have her interest, if she had any, in the estate of Nathan Webb, deceased, respected and protected by the court, that fact should have been reported to the court by the master.

NINTH EXCEPTION.

The master in chancery should have reported the fact that it was proved before him that Gertrude E. Webb, administratrix of the estate of Nathan Webb, deceased, now intermarried with David L. Huntington, had been, in October, 1869, removed by the probate court of El Paso County, Texas, from her trust as administratrix, and her right to sue as such had abated.

TENTH EXCEPTION.

The $15,000.00, which allegations in the bill and evidence of W. R. Shoemaker prove Webb had before his marriage, should be deducted from the amount of matrimonial acquests, in which the wife has
943 an interest. The gains of Nathan Webb in the business of W. H. Moore & Co., from the 13th of June, 1861, to 14th of September, 1862, should have been deducted from the amount found due complainant, as that amount did not belong to her, but to the mother of Nathan Webb, as his private property before marriage, to which amount the wife had no legal title or legal claim.

ELEVENTH EXCEPTION.

The said master erred in making it appear that the amount of $530.76 due the estate of N. Webb, deceased, from the firm of N. Webb & Co., when the uncontradicted answer of the defendants show' that the firm of N. Webb & Co., at the time of the death of said Nathan Webb, was insolvent and indebted to the firm of W. H. Moore & Co., (after closing the business of the said firm of N. Webb & Co., and crediting to N. Webb & Co. all available assets) in the sum of $35,019.70, as will more fully appear from the following statement:

Amount realized from the sale of goods, wares, and merchandize	28,982 06
Amount realized from debts due N. Webb & Co.	1,811 00
Brazito tract of land	9,697 34
944 Total assets	40,490 40
Debts due & owing by N. Webb & Co.	61,462 61
Loss	$20,972 21

The above shows a loss to N. Webb & Co. of $20,972.21, one-third of which, $6,990.74, added to $28,342.57, due by N. Webb & wife on the books of N. Webb & Co., shows an indebtedness of N. Webb, deceased, to N. Webb & Co. $35,233.31, instead of there being due to the estate of N. Webb from N. Webb & Co., $530.76, as per the master's report.

TWELFTH EXCEPTION.

The master erred in his said report by not deducting the sum of $190,361.38, amount of debts paid by the said defendants, which were credited by W. H. Moore & Co. during the life-time of said Nathan Webb, as appears by reference to Exhibit B, filed with the answer of said defendant W. H. Moore.

THIRTEENTH EXCEPTION.

There being nothing due the said complainant by the said defendants on account of the said Nathan Webb, deceased, the calculating and adding of interest by the master in his report was and is erroneous. The master erred in allowing interest in this case against the defendants, from October 15th, 1868, until October 15th, 1869, in the sum of $5,389 81

945 Also in allowing interest from October 15th, 1869, to August 20, 1870 ..... 3,376 21

Total $8,766 02

As the order to refer to the master in this case did not authorize the allowance of interest, and such allowance is erroneous until directed to be made by the chancellor as due in the case.

FOURTEENTH EXCEPTION.

In this case the complainant's bill is based upon a written partnership alleged to have been made between William H. Moore, William C. Mitchell, and Nathan Webb, and the non-production of the writing is accounted for by alleging that, if not lost or destroyed, is in the possession of the defendants, Moore & Mitchell, who, in their answer, under oath, deny the existence of any written articles ever having been made by the parties, and that in the verbal contract of partnership they allege that ⅛, and not ⅛, was the interest of Nathan Webb in the Fort Union branch of the business. There is no evidence anywhere to give the slightest foundation to suppose any written contract ever was
946 made, and the question whether in the absence of all proof as to the existence, or loss, or destruction of a written instrument, parol proof can be adduced and a decree had upon a contract not in writing, should be called to the attention and referred to the consideration of the court, to determine whether the bill shall not be dismissed, unless leave is given the complainant to withdraw her replication to the answer of defendants, and amend her bill to conform to the facts proved, as it is impossible to recover on a written contract when no written contract existed, and if a recovery is asked, or the contract-verbal admitted in the answer, the necessity of requiring the complainants to amend their bill is plain, ob'ious, and undoubted.

FIFTEENTH OBJECTION.

The complainant claims a decree against the defendants as the sole heir of the personal estate of her husband, Nathan Webb, under the laws of Texas, and as the administratrix of his estate in Texas, and in Mora County, New Mexico. The bulk of the personal property
947 in dispute is situate in Mora County, New Mexico; one-half belongs to Sarah Webb, mother of Nathan Webb, which facts should be stated in the report and referred to the court for adjudication.

SIXTEENTH EXCEPTION.

The books of W. H. Moore, Adams, & Co. were not examined by said master, and a correct account of said business of W. H. Moore & Co. and N. Webb & Co. cannot be ascertained without an examination of said books.

CLEVER, BENEDICT & WATTS,
Att'y for Def'ts.

On which said exceptions are the following endorsements, to wit:

G. E. Huntington, admi'x, &c., & D. L. Huntington, her husband, vs. W.

H. Moore & W. C. Mitchell. Exceptions to master's report. Filed in open court this 22d day of August, 1870. W'm Breeden, clerk.

Statement of cash received from N. Webb & Co. from sales of goods on hand at death of N. Webb.

948

	$28,982 06
Debts collected since death	1,811 00
Total	$30,793 06

Which sums are passed to the credit of N. Webb & Co. on the books of W. H. Moore & Co.

On which said exhibit is the following endorsement, to wit:

G. E. Huntington, administratrix, &c., & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Chancery. Filed in open court this 22d day of August, 1870. Wm. Breeden, clerk.

And afterwards, to wit, on Monday the 22d day of August, A. D. 1870, being the seventh day of the August, A. D. 1870, term of the district court for the first judicial district of the Territory of New Mexico, in and for the county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., & David L. Huntington, her husband,
vs.
949 WILLIAM H. MOORE & WILLIAM C. Mitchell. } Chancery.

This cause now came on to be heard upon the pleadings, proofs, the master's report, (the exceptions to the master's report and the equities reserved,) and being now argued by counsel and submitted to the court, and the court not being sufficiently advised in the premises, takes the same under advisement.

And on the same day, to wit, on Monday the 22d day of August, A. D. 1870, being the 7th day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., & David L. Huntington,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now come the said defendants, by their counsel, the court having heard a portion of the argument on the hearing of this cause, and
950 move to grant them time, until to-morrow morning, to prepare for the argument of this cause, which said motion is overruled by the court; and which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington,
vs.
W'M H. MOORE & W'M C. MITCHELL.
} Chancery.

And now comes the def'ts, by Clever, Benedict and Watts, and move the court for time, until to-morrow morning, to argue the exceptions, now, at 2 o'clock p. m., August 22d, 1870, filed herein to the report of the master in chancery in this case.

CLEVER, BENEDICT & WATTS,
For Def'ts.

On which said motion is the following endorsement, to wit:

G. E. Huntington, admi'x, &c., & D. L. Huntington, vs. W. H. Moore & W. C. Mitchell. Chancery. Motion for time to argue exceptions. Filed in open court this 22d day of August, 1870. W'm
951 Breeden, clerk.

And be it further remembered that, on Tuesday, the 23d day of August, A. D. 1870, being the 8th day of the August, A. D. 1870, term of the district court for the first judicial district of the Territory of New Mexico, in and for the county of Mora, in chancery sitting, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX of the estate of Nathan Webb, deceased, and David L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.
} Chancery.

This cause came on to be heard upon the bill, answers, exhibits, proofs, the master' report filed herein, (the exceptions to said report and the equities reserved,) and the same having been argued by the counsel of the respective parties and the court having duly considered the same, and it appearing to the satisfaction of the court that the
952 said Nathan Webb, in his life-time, was a full and equal partner in all of the business of the firms of William H. Moore & Co. and N. Webb & Co., composed of said defendants and said Nathan Webb, in his life-time, and it further appearing to the satisfaction of the court, that at the time of the filing the master's report herein, there was due and owing from the said defendants to the estate of the said Nathan Webb, deceased, the sum of ninety-seven thousand five hundred and ninety-six dollars and nineteen cents, together with legal interest thereon—

It is therefore, ordered, adjudged, and decreed that the exceptions filed to the master's report made in this cause be, and the same are hereby, overruled, and that said report in all respects be, and the same is hereby, confirmed. And it is further ordered, adjudged, and decreed that there is now due and owing by said defendants, William H. Moore and William C. Mitchell, to the estate of said Nathan Webb, de-
953 ceased, the sum of ninety-seven thousand five hundred and ninety-six dollars and nineteen cents, and that said defendants, William H. Moore and William C. Mitchell, deliver and pay to said Gertrude E. Huntington, administratrix of the estate of Nathan Webb, deceased, and David L. Huntington, her husband, the full sum of ninety-seven

thousand five hundred and ninety-six dollars and nineteen cents, with interest thereon at six per cent. per annum, from the date of the master's report, and that the defendants pay the costs herein to be taxed, and that execution issue for said sum of ninety-seven thousand five hundred and ninety-six dollars and nineteen cents, the interest thereon, and the costs aforesaid, against the said defendants.

And afterwards, to wit, on Tuesday, the 23d day of August, A. D. 1870, being the 18th day of the August, A. D. 1870, term of the said district court for the said county of Mora, the following proceedings were had; which said proceedings are in the words and figures following to wit:

954 GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., & David L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL. } Chancery.

And now come the said defendants, by their counsel, and move the court to set aside the judgment and decree rendered in this cause, and grant them a new hearing of this cause, which motion is overruled by the court; and which said motion and accompanying petition are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington,
vs.
W'M H. MOORE & W'M C. MITCHELL. } Chancery.

And now comes the said defendants, by Benedict, Clever and Watts, their attorneys, and moves the court to set aside the judgment and decree in the case of Gertrude E. Huntington, adm'x, and David L. Huntington against W'm H. Moore & William C. Mitchell rendered at
955 the August term, 1870, of the United States district court for the 1st judicial district in and for Mora County, Territory of New Mexico, and grant a rehearing for the following reasons, to wit:

1st. The court erred in finding that Nathan Webb, deceased, had ⅓ interest in the business of W'm H. Moore & Co., at Fort Union, New Mexico, during said partnership.

2nd. The court erred in rendering a decree for the estimated value of the goods on hand of N. Webb & Co., at his death, instead of the actual value, as shown by the books and answer under oath of Moore & Mitchell

3rd. The court erred in refusing to dismiss the bill for the want of proper parties disclosed in the answer of said defendants.

4th. The court erred in rendering a decree on a supposed verbal contract of partnership, when the allegations in the bill set up a written partnership, said to be in possession, if not lost or destroyed, of defendants.

5th. The court erred in overruling the exceptions to the re-
956 port of the master in chancery filed in said cause.

6th. The court erred in setting down the cause for hearing before the report of the master in chancery was received, and before a motion to suppress the deposition of Joab Houghton & W'm R. Shoemaker was disposed of by the court.

7th. The court erred in overruling the motion to consolidate the cross-bill of W'm H. Moore & W'm C. Mitchell against Joab Houghton & Gertrude E. Webb, now Huntington, with the original bill of Gertrude E. Webb, adm'x, now Huntington, against W'm H. Moore & W'm C. Mitchell, and to direct them to proceed together as one cause.

8th. The court erred in overruling the motion for one month's time to file exceptions to the report of the master in chancery in this case.

9th. The court erred in compelling the defendants to file exceptions to the report of the master in chancery on the same day in which they received a copy of said report, and in four hours after receiving said report of said master in chancery.

957 10th. The court erred in overruling the motion to refer the disputed fact of the interest of Nathan Webb, deceased, in the business of W. H. Moore & Co. at Fort Union, New Mexico, to be passed upon by a jury, as to that fact, in an issue at law to be tried by a jury.

11th. The court erred in allowing the sum of $10,258.75, $8,166.70, and $2,000, charged in the report of the master, to be charged against W'm H. Moore & W'm. C. Mitchell, received by them of N. Webb & Co. when the books of N. Webb & Co. and the evidence in the case shows and proves that said sums were accounted for on the books of N. Webb & Co. and on the books of W'm H. Moore & Co. by crediting the amount on the indebtedness of N. Webb & Co. to W'm H. Moore & Co.

12th. The court erred in including in the decree the earnings of Nathan Webb, deceased, from 13th of June, 1861, to 14th of September, 1862, as said gains did not belong to the administration of said estate, nor to the said Gertrude E. Huntington, former wife of Nathan Webb, deceased; but they belonged absolutely to Sarah Webb,

958 mother and only surviving parent of Nathan Webb, deceased.

13th. The court erred in charging W'm H. Moore and W'm C. Mitchell fifty per cent. of the debts due and owing at the death of Nathan Webb to the firm of N. Webb & Co., as the evidence proves conclusively that nothing like fifty per cent. of said debts had been collected or could be collected.

14th. The court erred in not dismissing the bill, for the reason that the bill charges that the letters of administration obtained on the estate of Nathan Webb, deceased, in Mora County, New Mexico, were ancillary to letters of administration granted in El Paso County, Texas, and it appears in proof that the letters of administration granted in Texas had been, in October, 1869, revoked by the probate court of El Paso County, and hence the ancillary letters of administration granted in Mora County, New Mexico, became inoperative and void.

15th. The court erred in not dismissing the bill of complaint,

959 for the reason that the record shows that said suit had abated by the marriage of the said Gertrude E. Webb with David L. Huntington, in September, 1869, and no new letters of administration have been taken out in the name of Gertrude E. Huntington and David L. Huntington, her husband, on said estate of Nathan Webb, deceased, nor any new bond given as such adm'x.

16th. The court erred in rendering a final decree herein for the complainants, when, upon the record and evidence in the case, the decree should have been for the defendants.

17th. The court erred in hearing the original bill in this case before the discovery and evidence sought to be obtained by the cross-bill could be obtained and produced on the hearing of the original bill herein.

CLEVER, BENEDICT & WATTS,
For Def'ts.

On which said motion is the following endorsement, to wit:

G. E. Huntington, adm'x, & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Motion for new hearing. Filed in open court this 23d day of August, 1870. W'm Breeden, clerk.

960

UNITED STATES OF AMERICA,
Territory of New Mexico:

To the Hon. Joseph G. Palen, chief justice of the supreme court of the Territory of New Mexico, and judge presiding in the 1st judicial district in and for Mora County, Territory of New Mexico, at the August term, 1870, of said court for the hearing of causes arising under the laws of the Territory of New Mexico:

Your petitioners, William H. Moore and William C. Mitchell, defendants in the suit of Gertrude E. Huntington, administratrix of Nathan Webb, deceased, and David L. Huntington, *are* complainants, show to the court that they find themselves much aggrieved by the decree made in this cause by the court on the 23d day of August, A. D. 1870, for the sum $97,596.19 against them, to be paid now.

961 Your petitioners would further state that they are not indebted to the said complainant, as they are advised and conceive. Your petitioners therefore respectfully ask the court to grant a rehearing for the reasons filed herein in this cause before the court, the said petitioners submitting to pay the costs the court shall decree, in case their complaint shall be found groundless. And your petitioners will ever pray, &c.

W'M H. MOORE AND
W'M C. MITCHELL,
By CLEVER, BENEDICT & WATTS,
For Pet.

On which said petition is the following endorsement, to wit:

W'm H. Moore & W'm C. Mitchell vs. G. E. Huntington, adm'x, &c., & David L. Huntington. Chancery. Petition on motion for rehearing in the within cause. Filed in open court this 23d day of August, 1870. W'm Breeden, clerk. Clever, Benedict & Watts, for petitioners, Moore & Mitchell.

962 And afterwards, to wit, on Tuesday, the 23d day of August, A. D. 1870, being the 8th day of the August, A. D. 1870, term of the said district court for the said County of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX of the estate of Nathan Webb, deceased, and David L. Huntington, her husband, *vs.* WILLIAM H. MOORE AND WILLIAM C. MITCHELL.	Chancery.

And now come the said defendants, by their counsel, and move the court to grant them an appeal to the supreme court of the Territory of New Mexico, from the judgment and decree of the court rendered in this cause, and now file the affidavit for appeal as required by law; which said motion and affidavit *is* in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Mora:

963 W'm H. Moore and W'm C. Mitchell, defendants in the case of Gertrude E. Huntington, administratrix of the estate of Nathan Webb, deceased, and David L. Huntington, complainants, in which case a decree has been made against them at the August term of the United States district court, 1870, in and for Mora County, New Mexico, for the sum of $97,596.19, now ask an appeal from this decree to the supreme court of the Territory of New Mexico, and upon their oath state that such appeal is not taken for vexation or delay; but because the affiants believe that the appellants are aggrieved by the judgment and decision of the court in this case against them.

W. H. MOORE.
W. C. MITCHELL.

Subscribed and sworn to before me this 23d day of August, A. D. 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

964 G. E. Huntington, adm'x, &c., & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Filed in my office this 23d day of August, 1870. W'm Breeden, clerk.

Whereupon it is ordered by the court that such appeal be, and hereby is, granted, and that execution on the judgment rendered herein by stayed upon the filing and approval of an appeal-bond in this cause in the penalty of one hundred and seventy thousand dollars.

And now come the said complainants, by their solicitors, and move the court to grant them an appeal to the said supreme court from the order and decision suppressing certain portions of the depositions of Joab Houghton and William R. Shoemaker, filed as evidence in this cause; which said motion is in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., & David L. Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.

965 In chancery. In the district court, county of Mora, Aug. term, A.D. 1870.

And now come the complainants, by their solicitors, and move the court for an appeal from the order suppressing testimony in this cause, to the supreme court of this Territory.

S. B. ELKINS &
T. D. WHEATON.

On which said motion is the following endorsement, to wit:

G. E. Huntington, adm'x, &c., & D. L. Huntington vs. William H. Moore & William C. Mitchell. Motion for an appeal. Filed in open court this 23d day of August, 1870. W'm Breeden, clerk.

Whereupon it is ordered by the court that said appeal be, and hereby is, allowed.

And afterwards, to wit, on the 23d day of August, A. D. 1870, the following security for costs was filed by the complainants, in the
966 words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADM'X, &C., & David L. Huntington
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.
} In chancery.

In the above-entitled cause, we, the undersigned, agree and bind ourselves to pay all costs that may be adjudged against the complainants. Witness our hands and seals this the 23d day of August, A. D. 1870.

W. R. SHOEMAKER. [SEAL.]
ADOLPH GRIESSINGER. [SEAL.]

On which said paper is the following endorsement, to wit:

G. E. Huntington, adm'x, &c., & D. L. Huntington, her husband, vs. W. H. Moore & W. C. Mitchell. Security for costs. Filed in open court, this 23d day of August, 1870. W'm Breeden, clerk.

967 And be it further remembered that, on Tuesday, the 23d day of August, A. D. 1870, being the 8th day of the August, A. D. 1870, term of the district court for the first judicial district of the Territory of New Mexico, in and for the county of Mora, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., & David Huntington, her husband,
vs.
WILLIAM H. MOORE & WILLIAM C. MITCHELL.
} Chancery.

And now come the said defendants and now file their appeal-bond herein, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico,
County of Mora:

Know all men by these presents that we, W'm H. Moore & William C. Mitchell, as principals, and John S. Watts, Ceran St. Vrain, Henry Birnbaum, Jacob Hecht, Vicente Romero, Fernando Nolan,
968 Charles W. Kitchen, and Andres Dold, as securities, are held and firmly bound unto Gertrude E. Huntington, administratrix of the estate of Nathan Webb, deceased, and David L. Huntington, her husband, in the sum of one hundred and seventy thousand dollars for the payment of which well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our hands and seals this 23d day of August, A. D. 1870.

The condition of the above obligation is such, that whereas the said Gertrude E. Huntington, administratrix of the estate of Nathan Webb, deceased, and David L. Huntington did obtain a judgment and decree against the said W'm H. Moore and W'm C. Mitchell at the August term of the said United States district court, A. D. 1870, for the 1st judicial district in and for Mora County, Territory of New Mexico, for the sum of ninety-seven thousand five hundred and ninety-six
969 dollars and nineteen cents, ($97,596.19,) from which said judgment

and decree an appeal has been asked and allowed, and granted to the supreme court of the Territory of New Mexico, at the said August term, A. D. 1870, of said court: Now, if the said W'm H. Moore and William C. Mitchell shall prosecute their said appeal with due diligence to a decision in the supreme court, and if the said judgment and decision appealed from shall be affirmed, or the appeal be dismissed, shall perform the judgment of the district court and pay all costs and damages that may be adjudged against them on said appeal, then this obligation to be null and void; otherwise to be and remain in full force and effect in law.

Witness our hands and seals this 23rd day of August, A. D. 1870.

	W. H. MOORE.	[SEAL.]
	W. C. MITCHELL.	[SEAL.]
	JOHN S. WATTS.	[SEAL.]
	CERAN ST. VRAIN.	[SEAL.]
	HENRY BIRNBEAUM	[SEAL.]
	JACOB HECHT.	[SEAL.]
	VICENTE ROMERO.	[SEAL.]
970	FERNANDO NOLAN.	[SEAL.]
	C. W. KITCHEN.	[SEAL.]
	ANDRES DOLD.	[SEAL.]

UNITED STATES OF AMERICA,
Territory of New Mexico:

This day personally appeared before me, the undersigned, clerk of the district court for the first judicial district of said Territory, the above-named William H. Moore, William C. Mitchell, John S. Watts, Ceran St.Vrain, Henry Birnbaum, Jacob Hecht, Vicente Romero, Fernando Nolan, Charles W. Kitchen, and Andres Dold, each and all of whom are to me well known, who signed and sealed the foregoing bond and acknowledged that they executed the same of their own voluntary act and will, for the purposes therein contained.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Mora, N. M., this twenty-third day of August, A. D. 1870.

[SEAL.] W'M BREEDEN, *Clerk.*

971 The above bond taken and approved by me as to form, manner of executing the same, and sufficiency of the sureties thereon, this 23rd day of August, A. D. 1870.

W'M BREEDEN, *Clerk.*

UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, clerk of the United States district court for the first judicial district of the Territory of New Mexico, do hereby certify that the preceeding and foregoing eight hundred & ninety-six (896) pages contain a full, true, and perfect transcript of all the papers and record of the entries made in the above-entitled cause as remains of record in my office.

In testimony whereof I have hereunto set my hand and the seal of said court, at Santa Fé, N. M., this 22d day of December, A. D. 1870.

[SEAL.] W'M BREEDEN, *Clerk.*

And afterwards, to wit, on Monday, the 2d day of January, A. D

1871, being the first day of the January (A. D. 1871) term of the supreme court of the Territory of New Mexico, the following assignment of errors was filed in the words and figures following, to wit:

972 In supreme court. Jan'y term, A. D. 1871.

G. E. HUNTINGTON, ADM'X, &C., D. L. HUNTington, appellants,
vs.
W. H. MOORE & W. C. MITCHELL, APPELlees.

The appellants, by their solicitors, assign for error the following in the court below:

1st. The court erred in suppressing certain portions of the depositions of Joab Houghton and W. R. Shoemaker in the above-entitled cause.

S. B. ELKINS,
Sol. for Appellants.

On which said assignment of errors is the following endorsement, to wit:

G. E. Huntington, adm'x, &c., & D. L. Huntington vs. W. H. Moore & W. C. Mitchell. Assignment of errors by the appellants, G. E. Huntington & D. L. Huntington. Filed in my office this 2d day of January, 1871. W'm Breeden, clerk.

And afterwards, to wit, on the same day of said term of said court, the following assignment of errors *were* filed, which are in the words and figures following, to wit:

In the supreme court for the Territory of New Mexico, at the January term thereof, A. D. 1871.

GERTRUDE E. WEBB, ADM'X, &C., NOW GERtrude E. Huntington, and David L. Huntington
973 *vs.* } Appeal.
WILLIAM H. MOORE AND WILLIAM C. Mitchell.

The said defendants, (plaintiffs in error,) assign for error in the above-entitled cause in the court below the following causes, to wit:

1st. The court below erred in overruling the motion of the said defendants for a rule against the complainants to make Sarah Webb, the mother of the deceased husband of the said Gertrude E. Webb, a party to their suit.

2d. The court below erred in making and enforcing a decree against the said defendants to pay to the said complainant, or to her order, or to Stephen B. Elkins, her solicitor, or to his order, the sum of one thousand dollars.

3d. The court below erred in refusing to vacate and set aside the decree mentioned in assignment of error No. 2, and in overruling the motion made for that purpose by the said defendants.

4th. The court below erred in refusing to grant an appeal to the supreme court from the decree above mentioned.

5th. The court below erred in overruling the motion of said defendants to amend their answers in said cause.

6th. The court below erred in refusing to dismiss the bill of
974 complainants for the want of proper parties in the answer of said defendants.

7th. The court below erred in not dismissing the bill for the reason that the bill charges that the letters of administration obtained on the estate of Nathan Webb, deceased, in Mora County, New Mexico, were ancillary to letters of administration granted in El Paso County, Texas, and it appearing in proof that the letters of administration granted in Texas had been, in October, 1869, revoked by the probate court of El Paso County, and hence the ancillary letters of administration granted in Mora County, New Mexico, became inoperative and void.

8th. The court below erred in not dismissing the bill of complainant, for the reasons that the record shows that said suit had abated by the marriage of the said Gertrude E. Webb with David L. Huntington in September, 1869, and no new letters of administration have been taken out in the name of Gertrude E. Huntington and David L. Huntington, her husband, on said estate of Nathan Webb, deceased,
975 nor no new bond given as such adm'x.

9th. The court below erred in overruling the motion to grant to said defendants thirty days to file their exceptions to the master's report.

10th. The court below erred in overruling the motion to consolidate with this suit the suit commenced by the cross-bill of said defendants against said complainants and Joab Houghton.

11th. The court below erred in overruling the motion made by said defendants for an order upon said complainants, requiring them within such reasonable time as the court might direct, to make Sarah Webb, the mother of the deceased husband of the said Gertrude E. Webb, a party to this suit, and that the proceedings upon said bill as a final decree be stayed until all the parties in interest as heirs or distributees of the estate of Nathan Webb, deceased, are properly before the court as interested parties.

12th. The court below erred in granting the motion of complainants for an order closing the proofs in this cause and in ordering
976 that the proofs in this cause be closed.

13th. The court below erred in setting down the cause for hearing before the report of the master in chancery was received and before a motion to suppress the deposition of Joab Houghton and William R. Shoemaker was disposed of by the court.

14th. The court below erred in overruling a motion of said defendants to suppress the deposition of Joab Houghton and William R. Shoemaker filed as evidence in this cause.

15th. The court below erred in overruling the motion to refer the disputed fact of the interest of Nathan Webb, deceased, in the business of W. H. Moore & Co., at Fort Union, New Mexico, to be passed upon by a jury as to that fact in an issue at law to be tried by a jury.

16th. The court below erred in compelling the defendants to file exceptions to the report of the master in chancery on the same day in which they received a copy of said report, and within four hours after receiving said report of said master in chancery.

17th. The court below erred in overruling the motion of said
977 defendants to suppress testimony of Joab Houghton and William R. Shoemaker.

18th. The court below erred in not granting time to the solicitors of the said defendants to prepare their argument in this cause, on the part of said defendants.

19th. The court below erred in overruling the exceptions filed by said defendants to the report of said master in chancery, and in confirming said master's report, and rendering a decree thereon against the said defendants.

20th. The court below erred in decreeing the interest of said Nathan Webb, deceased, to have been one-third interest in the business of W'm H. Moore & Co. at Fort Union, New Mexico, during the partnership of said Nathan Webb, deceased, and W'm H. Moore.

21st. The court below erred in rendering a decree for the estimated value of the goods on hand of N. Webb & Co., at his death, instead of the actual value as shown by the books and answer under oath of Moore and Mitchell.

22d. The court below erred in rendering a decree on a supposed verbal contract of partnership, when the allegations in the bill set up a
978 written partnership, said be in possessison, if not lost or destroyed, of defendants.

23d. The court below erred in charging W'm H. Moore and W'm C. Mitchell with fifty per cent. of the debts due and owing, at the death of Nathan Webb, to the firm of N. Webb & Co., as the evidence proves conclusively that nothing like fifty per cent. of said debts had been collected or could be collected.

24th. The court below erred in rendering a final decree in this cause for the complainants, when, upon the record and evidence in the case, the decree should have been for the defendants.

25th. The court below erred in overruling the motion of said defendants to set aside the judgment and decree rendered in this cause, and to grant them a new hearing therein.

WATTS, BENEDICT & CLEVER,
Solicitors for Defendants, and now Plaintiffs in Error.

The defendants in error and appellees say there is no error in the record.

S. B. ELKINS,
Sol. for Appellees.

979 On which said assignment of errors is the following endorsement, to wit:

Gertrude E. Webb and David L. Huntington vs. W'm H. Moore and W'm C. Mitchell. Appeal. Assignment of errors. Filed in my office this 2d day of January, 1871.

W'M BREEDEN, *Clerk.*

And be it further remembered that, on Wednesday the 4th day of January, A. D. 1871, being the 3rd day of the January, A. D. 1871, term of the supreme court of the Territory of New Mexico, the following among other proceedings were had; which said proceedings are in the words and figures following, to wit:

GERTRUDE E. WEBB, ADMINISTRATRIX, &C.
vs.
W'M H. MOORE AND W'M C. MITCHELL, APPELLANTS.

Appeal from 1st district from an interlocutory order entered October 11th, 1869. Appeal allowed on mandamus to Judge Palen, presiding in chancery.

980 And now comes the said appellee, by her counsel, and moves the court to dismiss the appeal herein, for reasons stated in said motion, which motion is set down for argument on Monday next; which said motion is in the words and figures following, to wit:

In sup. court, Jan'y term, A. D. 1871.

W. H. MOORE AND W. C. MITCHELL, APPELLANTS,
vs.
G. E. WEBB, ADM., APPELLEE*s*.

Appeal from order of judge at chambers, directing payment by defendants below to complainant of one thousand dollars.

And now comes the defendant in error, and appellee, by her solicitor, and moves the court to dismiss the appeal herein, for the reason that the court has no jurisdiction of the same.

2nd. The said order or decree not being final, could not be appealed from.

3d. And for other good and sufficient reasons apparent on the face of the record.

S. B. ELKINS,
Sol. for Def't'd in Error.

981 On which said motion is the following endorsement, to wit:

W. H. Moore & W. C. Mitchell vs. G. E. Webb, adm'x. &c., Motion to dismiss appeal. Filed in my office this 4th day of January, 1871.
W'M BREEDEN, *Clerk.*

And afterwards, to wit, on Thursday, the 4th day of said term of said supreme court, the following among other proceedings were had; which are in the words and figures following, to wit:

GERTRUDE E. WEBB, ADM'X, &C.,
vs.
W'M H. MOORE & W'M C. MITCHELL.
Appeal. Mora Co., 1st dist.

On motion of said defendants, by their counsel, it is ordered that the title of this cause be amended, or changed on the docket, to show the change of name of the complainant, and the addition of her husband, David L. Huntington, as a party complainant to the suit.

982 And afterwards, to wit, on the same day of said term of said supreme court, the following proceedings among others, were had; which are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Hus*band*, her husband,
vs.
W'M H. MOORE AND W'M C. MITCHELL.

And now come the appellants by their counsel and move the court

to consolidate this cause, for the purposes of argument, with cause No. 78, for reasons stated in said motion, which motion is set down for hearing immediately after the determination of the motion of the appellees, now pending to dismiss the appeal herein.

And afterwards, to wit, on Saturday, the 6th day of the January, A. D. 1871, term of the said supreme court, the following among other proceedings were had; which are in the words and figures following, to wit:

983 GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
W'M H. MOORE AND W'M C. MITCHELL. } Appeal. Mora Co. 1st dist. C. J. Palen.

And now come the said appellants, by their counsel, and move the court to grant them leave to file assignment of additional causes of error in this cause for reasons stated in affidavits filed, which motion is sustained by the court, and such additional assignment of errors is now filed; which said motion and affidavit are in the words and figures following, to wit:

W'M H. MOORE & W'M C. MITCHELL, APPELLANTS,
vs.
GERTRUDE E. HUNTINGTON & DAVID L. HUNTINGTON, appellees. } Appeal.

And now comes the said appellants, by their attorneys, and move the court for the causes set forth in the accompanying affidavit for leave to file herein additional assignments of error now herewith presented to the court.

CLEVER, BENEDICT,
NOBLE, & WATTS,
For Appellants.

984 On which motion is the following endorsement, to wit:

W'm H. Moore & W'm C. Mitchell, appellants, vs. Gertrude E. Huntington & D. L. Huntington, appellees. Motion for leave to file assignment of additional causes of error. Filed in open court this 7th day of January, 1871. W'm Breeden, clerk.

W'M H. MOORE & W'M C. MITCHELL, APPELLANTS,
vs.
GERTRUDE E. HUNTINGTON & DAVID L. HUNTINGTON, appellees. } Appeal.

John S. Watts and John W. Noble, upon their oaths state that they are two of the attornies of the appellants in the above-entitled cause now pending in the supreme court of the Territory of New Mexico, by appeal from the district court of Mora County, New Mexico, 1st judicial district of the Territory of New Mexico. Said affiants further state that they left St. Louis, Missouri, for New Mexico on
985 the 16th of December, 1870, with the intention of arriving at

Santa Fé, N. M., on the 22d or 23d of December, 1870, in order to have time to examine the record and assign upon it in full all the errors in our judgment existing in the record. Said affiants further state that while en route to Santa Fé they were overtaken by a severe snow-storm at a point on the Kansas Pacific railway called Fort Wallace, and by the obstruction of railroad with snow, the said affiants were detained at Fort Wallace station on said road for the space of ten days before it was possible to pursue our journey to Santa Fé, from which cause said affiants were prevented from arriving at Santa Fé until the 3d of January, 1871, being the 2d day of the term of the supreme court of the Territory of New Mexico. Said affiants further state that several errors were assigned by said appellants' attorneys at Santa Fé on the first day of said term of said court, but said affiants do not consider that said assignments of errors on said record are as full
986 and complete as the importance of the case demands, and that it is material to the cause and interest of said appellants to amend the assignment of errors by the filing of further and additional errors in this case now presented to the court and asked to be filed. Said affiants further state that these additional causes of error would have been assigned on the first day of the present term of the supreme court had it not been for the detention above mentioned.

Said affiants further state that they deem the cause above mentioned a good cause for their failure to assign the causes of error now presented, and ask that they now be filed as an amendment to the errors now on file herein. Said affiants further state that said application is not made for delay, but in order to present fully to the court the supposed points of error arising on the record. Said John S. Watts further states that since the amended answer was filed, he has
987 been the leading solicitor of said defendants and intrusted with the preparation of the pleadings in the case, and would have had these additional cause' of error assigned on the record on the first day of the present term had it not been for his unavoidable detention as above stated. Said affiant would further state that the record in this case consists of 897 pages, and this affiant and the said John W. Noble had devoted all their time dilegently to the examination of said record and the preparation of said additional causes of error, and could not complete them until the 6th of Jan'y, 1871, after adjournment of the court for that day. All of which is respectfully submitted to the court.

JOHN S. WATTS.
JOHN W. NOBLE.

Subscribed and sworn to before me this 7th day of January, A. D. 1870.

W'M BREEDEN, *Clerk.*

On which said affidavit is the following endorsement, to wit:

988 W'm H. Moore & W'm C. Mitchell, appellants, vs. Gertrude E. Huntington, adm'x, & D. *H.* Huntington, her husband, appellees. Affidavit showing cause to file assignment of additional causes of errors. Filed in open court this 7th day of January, 1871. W'm Breeden, clerk.

And now come the said appellants, by their counsel, and move the court for leave to file as a part of the record herein a certified copy of the draft report of the master in chancery made in this cause in the

court below, now presented by said counsel, which motion being argued by counsel and the court not being sufficiently advised in the premises, takes said motion under advisement.

And afterwards, to wit, on the same day of said term of said
989 court, the following additional assignment of errors were filed; which are in the words and figures following, to wit:

In the supreme court of the Territory of New Mexico.

WILLIAM H. MOORE & WILLIAM C. MITCHELL, appellants,
vs.
GERTRUDE E. HUNTINGTON & DAVID H. HUNTington, appellees.

Appeal from 1st dist. court, Mora Co., N. Mexico.

And now come the appellants and by permission of the court on cause shown, do*es* in the above-entitled cause assign for error in the record and proceedings of the court below, the following additional causes:

26th. The court erred in not finally passing upon and decreeing regarding the title to the real estate specifically described and otherwise mentioned in the answer of the respond*a*nts, and if the same were assets subjecting them to the payment of debts, sale, or distribution.

27. That there was error in that the court below did not deter-
990 mine on the evidence and pleadings that the real estate described in answer, was assets of the copartnership designated.

28. That the court erred in not dismissing said bill of complaint for want of proper parties, who were made known to the court and interested in the event of this cause, and particularly Sarah Webb. mother of the deceased partner.

29. That the court erred in not passing upon the right of complainant in her alleged capacity of sole heir, and either dismissing the bill as to complainant in said capacity, or decreeing against her interest claimed in such capacity.

30. That the court erred in not determining definitely by its decree in whose favor the same was made, whether in favor of complainant as administratrix by appointment of probate court of El Paso County, Texas, or administratrix by appointment of probate court of Mora County, Territory of New Mexico.

31. That the court erred in not dismissing said bill of com-
991 plaint for multifariousness as to parties complainant.

32. The court erred in decreeing that the respondents, W. H. Moore and W. C. Mitchell, should pay to Gertrude E. Huntington, administratrix of the estate of Nathan Webb, deceased, and David L. Huntington, her husband, the sum found due by said decree.

33. That the court erred in decreeing the respondents, W. H. Moore and W. C. Mitchell, should pay said David *R.* Huntington, husband of Gertrude E. Huntington, any sum whatever.

34. The court erred in decreeing finally upon the complainants' bill and separate amended answers of W. H. Moore & W. C. Mitchell in this cause without disposing at the same time of the issues raised upon the cross-bill of said Moore & Mitchell, filed with said answers against the complainant and Joab Houghton, as was by equity required.

35. That the court erred in granting any relief upon the allega-
992 tions of the bill of complainant, the same being unsupported by proofs.

36. There being other and obvious errors on the face of the record.

Whereupon appellants ask that said decree may be reversed and said bill dismissed.

CLEVER, BENEDICT,
NOBLE, & WATTS,
For Appellants.

On which said assignment of additional errors is the following endorsement, to wit:

William H. Moore & William C. Mitchell, appellants, vs. Gertrude E. Huntington & David L. Huntington, appellees. Assignment of additional causes of error. Filed in open court this 7th day of January, 1871. W'm Breeden, clerk.

And be it further remembered that on the 7th day of said term of said supreme court the following proceedings among others were had;
993 which are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband, *vs.* W'M H. MOORE AND W'M C. MITCHELL, APPELLANTS. } Appeal. Mora Co. 1st dist.

The motion of the said appellants, by their counsel, for leave to file as a part of the record herein a certified copy of the draft report of the master in chancery, made in this cause in the court below, having been argued by counsel and submitted to the court on a former day of this term, and the court having then taken said motion under advisement, and being now sufficiently advised in the premises, overrules and denies said motion.

And be it further remembered that afterwards, to wit, on Monday, the 9th day of January, A. D. 1871, being the 7th day of the Janu-
994 ary, A. D. 1871, term of the said supreme court for the Territory of New Mexico, the following proceedings among others were had; which are in the words and figures following, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and D. L. Huntington, her husband, *vs.* W'M H. MOORE AND W'M C. MITCHELL, APPELLANTS.

Appeal from an order entered Oct. 11, 1869, at chambers, by C. J. Paleu.

The motion of said appellees, by their counsel, to dismiss the appeal herein, now came on to be heard, and was now argued by counsel, and the court not being sufficiently advised in the premises takes said motion under advisement.

And afterwards, to wit, on the 9th day of said term of the said supreme court, the following among other proceedings were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX &c., and D. L. Huntington, her husband,
vs.
W'M H. MOORE AND W'M C. MITCHELL, APpellants. } 66.

Appeal from an interlocutory order, entered Oct. 11, 1869, at chambers, by C. J. Palen.

995 The motion of the said appellees, by their counsel, to dismiss the appeal herein, having been argued by counsel and submitted to the court on a former day of this term, and the court having then taken said motion under advisement, and being now sufficiently advised in the premises sustains said motion.

It is therefore considered and adjudged by the court that the appeal herein be, and is hereby, dismissed, and that the said appellees recover of the said appellants their costs in this behalf expended, to be taxed, and that execution issue therefor. Opinion delivered by Associate Justice Waters and ordered to be recorded.

Whereupon said appellants now file their motion for an appeal to the Supreme Court of the United States, from the judgment and decision of the court, dismissing the appeal herein, which motion is sustained by the court; it is therefore ordered that an appeal be allowed
996 herein as prayed for in said motion upon the appellants complying with the law in this behalf.

And afterwards, to wit, on the 16th day of said term of said supreme court the following, among other proceedings, were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and D. L. Huntington, her husband,
vs.
W'M H. MOORE AND W'M C. MITCHELL. } 78.

Appeal. Mora Co. 1st district. C. J. Palen.

This cause is set down for argument on Tuesday next.

And afterwards, to wit, on the 13th day of said term of said court the following proceedings, among others, were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and D. L. Huntington, her husband,
vs.
W'M H. MOORE AND W'M C. MITCHELL, APpellants.

Appeal. Mora Co. 1st dist. C. J. Palen.

997 On motion of said appellants, by their counsel, the argument of this cause, set for to-morrow, is now postponed, and this cause is now set down for hearing on Wednesday next.

And afterwards, to wit, on the same day of said term of said court the following among other proceedings were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and D. L. Huntington, her husband, *vs.* W'M H. MOORE AND W'M C. MITCHELL, APPELLANTS. } 78.

Appeal. Mora Co. 1st district.

And now come the counsel for said appellants and move the court to permit two counsel for the appellants to speak upon the opening of the argument in this cause, and one counsel to speak at the close in reply to the counsel of the appellees, it being the rule of the court that but two counsel shall be permitted to argue for each party in a
998 cause; which motion is taken under advisement by the court.

And afterwards, to wit, on the 14th day of said term of said court the following proceedings were had, among others, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband, *vs.* W'M H. MOORE & W'M C. MITCHELL. } 78.

Appeal. Mora Co. 1st district.

The motion of the counsel of the said appellants for leave for two counsel of the appellants to speak upon the opening of the argument in this cause, and one counsel to speak on the close of the argument, and in reply to the counsel of the appellees, having been taken under advisement by the court at a former day of this term, and the court being now sufficiently advised in the premises, overrules and denies said motion.

999 And afterwards, to wit, on the 15th day of said term of said court, the following proceedings, among others, were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and D. L. Huntington, her husband, *vs.* W'M H. MOORE AND W'M C. MITCHELL, APPELLANTS. } 78.

Appeal. Mora Co. 1st district.

This cause now came on to be heard, and was now argued by John S. Watts, esq., of counsel for the said appellants; and there not being time to conclude the argument of this cause on this day, the same is continued until to-morrow.

And afterwards, to wit, on the 16th day of said term of said supreme court, the following proceedings, among others, were had, to wit:

1000 GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
W'M H. MOORE AND W'M C. MITCHELL, APPELLANTS. } 78.

Appeal. Mora Co. 1st dist.

This cause again came on to be heard, and was now argued by Messrs. Elkins and Wheaton, for the appellees; and, there not being time to conclude the argument of this cause on this day, the same is continued until to-morrow.

And afterwards, to wit, on the 17th day of said term of said court, the following, among other proceedings, were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
W'M H. MOORE AND W'M C. MITCHELL, APPELLANTS. } 78.

Appeal. Mora Co. 1st district. C. J. Palen.

1001 This cause again came on to be heard, and was now argued by J. W. Noble, of counsel for the appellants, and the argument herein being now concluded, and the court not being sufficiently advised in the premises, takes this cause under advisement.

And afterwards, to wit, on the 24th day of said term of said court, being the 28th day of January, A. D. 1871, the following proceedings, among others, were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL. } Chancery.

Appeal from Mora County 1st judicial district, Chief Justice Palen presiding.

This cause having been argued by the counsel for the respective parties, and submitted to the court at a former day of this term, and the court having then taken the same under advisement, and being now sufficiently advised as to what decree should be rendered in this
1002 cause, it is ordered, adjudged, and decreed that the appeal taken herein by the complainants be, and the same is hereby, dismissed at the costs of said complainants, to be taxed.

And it appearing to the satisfaction of the court that the decree rendered in this cause in the court below should be reduced by the sum of twenty-four thousand six hundred and seventy-five dollars and forty-four cents on account of errors appearing upon the record, and that the decree should have been for the sum of seventy-two thousand nine hundred and twenty dollars and seventy-five cents instead of ninety-seven

five hundred and ninety-six dollars and nineteen cents; it is, therefore, ordered, adjudged, and decreed that the decree of the court below in this cause be reduced by said sum of twenty-four thousand six hundred and seventy-five dollars and forty-four cents; and that said decree in all other respects be, and is hereby, affirmed for the said
1003 amount of seventy-two thousand nine hundred and twenty dollars and seventy-five cents, with interest thereon from the rendition thereof, in the court below on the twenty-third day of August, A. D. one thousand eight hundred and seventy, at the rate of six per cent. per annum, amounting to the sum of seventy-four thousand eight hundred and forty dollars. And it is further ordered, adjudged, and decreed that the said appellees, Gertrude E. Huntington, administratrix, and David L. Huntington, her husband, recover of the said appellants, William H. Moore and William C. Mitchell, the said sum of seventy-four thousand eight hundred and forty dollars, the amount of said decree as herein affirmed, and interest, and also their costs in this behalf expended, as well in the court below as in this court, to be taxed, and that execution issue therefor.

And it appearing to the satisfaction of the court from the
1004 record that John S. Watts, Ceran St. Vrain, Henry Birnbaum, Jacob Hecht, Vicente Romero, Fernando Nolan, Charles W. Kitchen, and Andres Dold are securities on the appeal-bond of the said appellants herein, it is further ordered, adjudged, and decreed that the said appellees have judgment against said securities for the amount of said judgment, interest, and costs. And that said appellees, Gertrude E. Huntington, administratix, &c., and David L. Huntington, her husband, recover of the said appellants, William H. Moore and William C. Mitchell, and John S. Watts, Ceran St. Vrain, Henry Birnbaum, Jacob Hecht, Vicente Romero, Fernando Nolan, Charles W. Kitchen, and Andres Dold, their securities, the said sum of seventy-four thousand eight hundred and forty dollars as aforesaid, as also their costs in this behalf expended, as well in the court below as in this court, to be taxed, and that execution issue therefor.

1005 Decree of the court announced by Associate Justice Waters, written opinion to be filed by Associate Justice Waters, and reasons for decree of court below to be filed by Chief Justice Palen, in vacation.

And afterwards, to wit, on the 25th day of said term of said court, the following proceedings among others were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband, *vs.* WILLIAM H. MOORE, AND WILLIAM C. MITCHELL, appellants, } Appeal. Mora Co. 1st district.

And now comes John S. Watts, a solicitor of this court, and one of the securities on the appeal-bond of the said appellants, and for himself and his co-securities on said appeal-bond, moves the court to set aside and vacate the judgment entered up against them as such securities, for reasons stated in said motion, and the same being argued by
1006 counsel, and the court being sufficiently advised in the premises, overrules and denies said motion.

Which said motion is in the words and figures following, to wit:

W'm H. Moore & W'm C. Mitchell, appellants,
vs.
Gertrude E. Huntington & David L. Huntington, appellees.
} Appeal.

And now comes John S. Watts, one of the securities on the appeal-bond of W'm H. Moore and W'm C. Mitchell in the case of Gertrude E. Huntington, administratrix, and David L. Huntington against them, in the Mora district court, August term, 1870, and for himself and co-securities on said appeal-bond, moves the court to set aside and vacate the judgment entered up against them as said securities, but not signed by the court for the following reasons, to wit:

1007 1. There is no law in existence within the Territory of New Mexico authorizing a judgment on an appeal bond from the district court of New Mexico to the supreme court of New Mexico without notice, service of process, or trial, the statute allowing such judgments to be rendered on appeals from justices of the peace and probate judges to the district court, not applying to judgments in the supreme court from appeals from the district court.

2. It appearing by the affidavit of Henry Birnbaum, filed herein, that Ceran St. Vrain, one of said sureties on said bond, died at Mora, New Mexico, on the 28th day of October, 1870, since the execution of said appeal-bond and prior to the commencement of the January term of the supreme court of the Territory of New Mexico, and hence the judgment entered is erroneous and should be set aside.

3. The said John S. Watts and his co-securities are not principals in said appeal bond but mere securities for W'm H. Moore and

1008 W'm C. Mitchell, as principals in said bond, and under the 8th section of an act passed 12th of July, 1851, are not liable to have a judgment rendered against them without service of process, appearance, or trial, and without the principal having violated any of the conditions mentioned in said bond, and without any suit having been instituted against them or their principals, at any time on said bond for failure to comply with its conditions and obligations. For the above reasons the said securities ask the court to vacate and annul said judgment.

JOHN S. WATTS *in person,*
And Att'y for Co-securities.

And afterwards, to wit, on the same day, the following affidavit was filed in said court, to wit:

The Territory of New Mexico,
County of Santa Fé, ss:

1009 Henry Birnbaum, being duly sworn, upon his oath states that Ceran St. Vrain, the same person named in & who signed the appeal-bond in the suit of Gertrude E. Huntington, administratrix, and David L. Huntington, her husband, vs. William H. Moore & William C. Mitchell, in the United States district court for the first judicial district in & for Mora County, & Territory of New Mexico, at the August term, A. D. 1870, of said court, departed this life at Mora, New Mexico, on or about the 28th day of October, A. D. 1870.

HENRY BIRNBAUM.

Subscribed and sworn to before me this 30th day of January, A. D. 1871.

W'M BREEDEN, *Clerk.*

And afterwards, to wit, on the 25th day of said term of said court, being the 30th day of January, A. D. 1871, the following among other proceedings were had, to wit:

1010 GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL.
} 78. Appeal. Mora Co. 1st district.

And now in open court it is suggested and made known to the court that since the execution of the appeal-bond herein and before the rendition of the decree and judgment of this court upon said bond, Ceran St. Vrain, one of the securities named in said appeal-bond, departed this life. Therefore upon motion of said appellees by their counsel, it is ordered, adjudged, and decreed that the decree and judgment rendered in this cause at a former day of this term be amended and be rendered against William H. Moore and William C. Mitchell, appellants herein, and principals on said appeal-bond, and John S. Watts, Henry Birnbaum, Jacob Hecht, Vicente Romero, Fernando Nolan,
1011 Charles W. Kitchen, and Andres Dold, securities on said appeal-bond, survivors of the said Ceran St. Vrain, deceased.

The motion above mentioned is in the words and figures following, to wit:

W. H. MOORE AND W. C. MITCHELL, APPELLANTS,
vs.
GERTRUDE E. HUNTINGTON, ADM'X, &C., AND David L. Huntington, appellees.

The death of Ceran St. Vrain, one of the securities on the appeal-bond in the above-entitled cause, having been suggested after the rendition of the decree herein—

The defendants in error move the court to amend the judgment or decree rendered herein so as to read against the other sureties and principals on said bond, and not against said Ceran St. Vrain.

S. B. ELKINS,
T. D. WHEATON,
1012 *Sols. for Appellees.*

And afterwards, to wit, on the 26th day of said term of said court, the following proceedings, among others, were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL, appellants.
} Appeal. Mora Co. 1st district.

And now come the appellants, William H. Moore and William C.

Mitchell, and John S. Watts, Henry Birnbaum, Jacob Hecht, Vicente Romero, Fernando Nolan, Charles W. Kitchen, and Andrés Dold, their securities, by their counsel, and claim their appeal to the Supreme Court of the United States from the decree rendered against them in this cause, and move the court to now allow the same, and enter of record such allowance.

1013 Which said motion is in the words and figures following, to wit:

WILLIAM H. MOORE & WILLIAM C. MITCHELL, appellants,
vs.
GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, and David L. Huntington, her husband, appellees.

In the supreme court of the Territory of New Mexico.

And now come William H. Moore, William C. Mitchell, John S. Watts, Henry Birnbaum, Jacob Hecht, Vicente Romero, Fernando Nolan, Charles W. Kitchen, and Andrés Dold, and claim their appeal to the Supreme Court of the United States from the decree rendered in said cause against them, and ask that the same may now in open court be allowed them, and notice of said appeal be entered of record as of this day.

CLEVER, NOBLE & WATTS,
Att'ys for s'd Defendants.

1014 Which motion is sustained by the court; and it is ordered that such appeal be, and the same is hereby, allowed, and notice is now given in open court of such appeal.

And said appellants now file the following affidavit in open court, to wit:

WILLIAM H. MOORE & WILLIAM C. MITCHELL, appellants,
vs.
GERTRUDE E. HUNTINGTON, ADM'ST'X, & DAVID L. Huntington, her husband, appellees.

In the supreme court of the Territory of New Mexico.

THE TERRITORY OF NEW MEXICO,
County of Santa Fé, ss:

John S. Watts, being duly sworn, upon his oath states that the amount in controversy in the above-entitled cause, on which an
1015 appeal is taken to the Supreme Court of the United States, from the decree in said supreme court of the Territory of New Mexico, rendered, doth exceed one thousand dollars. And further deponent saith not.

JOHN S. WATTS.

Subscribed & sworn to this 31st day of January, A. D. 1871.
W'M BREEDEN, *Clerk.*

And afterwards, to wit, on the 26th day of said term of said court, the following proceedings, among others, were had, to wit:

GERTRUDE E. HUNTINGTON, ADMINISTRATRIX, &c., and David L. Huntington, her husband, appellees,
vs.
WILLIAM H. MOORE AND WILLIAM C. MITCHELL, appellants.
} Appeal from Mora Co. 1st district.

And now come William H. Moore and William C. Mitchell,
1016 John S. Watts, Henry Birnbaum, Jacob Hecht, Vicente Romero, Fernando Nolan, Charles W. Kitchen, and Andrés Dold, appealing to the Supreme Court of the United States in this cause, and present their bond on appeal, with sufficient sureties thereon for a supersedeas, the same having been duly approved, and the said bond is now in open court hereby duly approved and ordered to be filed, and it is ordered that the execution herein heretofore ordered, be stayed, the same having been superseded.

The said appeal-bond of the said appellants being in the words and figures following, to wit:

Know all men by these presents that we, William H. Moore, William C. Mitchell, John S. Watts, Henry Birnbaum, Jacob Hecht, Vincente Romero, Fernando Nolan, Charles W. Kitchen, and Andrés Dold,
1017 as principals, and William B. Stapp, Charles S. Hopkins, Juan Maria Baca, William Kroenig, and Trinidad Romero, as sureties, are held and firmly bound unto Gertrude E. Huntington, administratrix of the estate of Nathan Webb, deceased, and David L. Huntington, her husband, their heirs, successors, and legal representatives, in the sum of one hundred and fifty thousand dollars, to the payment whereof well and truly to be made, we bind ourselves, jointly and severally, our heirs, executors, and administrators, firmly by these presents, as witness our hands and seals this the thirty-first day of January, A. D. eighteen hundred and seventy-one.

The condition of the above obligation is such, that whereas said Gertrude E. Huntington, administratrix as aforesaid, & David L. Huntington, her husband, did obtain a decree against said William H.
1018 Moore and William C. Mitchell at the August term, A. D. 1870, of the United States district court for the first judicial district in and for Mora County, and Territory of New Mexico, for the sum of ninety seven thousand five hundred and ninety-six dollars and nineteen cents; and whereas an appeal from said decree was prosecuted by said William H. Moore and William C. Mitchell to the supreme court of the Territory of New Mexico against said Gertrude E. Huntington, administratrix, and David L. Huntington, her husband, appellees, said Watts, Birnbaum, Hecht, Romero, Nolan, Kitchen, and Dold, with one Ceran St. Vrain, since deceased, being sureties on the appeal-bond; and whereas the above-named William H. Moore, William C. Mitchell, John S. Watts, Henry Birnbaum, Jacob Hecht, Vincente Romero, Fernando No-
1019 lan, Charles W. Kitchen, and Andrés Dold have taken an appeal to the Supreme Court of the United States from the decree rendered in said suit of William H. Moore and William C. Mitchell, appellants, against said Gertrude E. Huntington, administratrix as aforesaid, and David L. Huntington, her husband, appellees, by the said supreme court of the Territory of New Mexico, wherein and whereby the

said William H. Moore and William C. Mitchell, as principals, and John S. Watts, Henry Birnbaum, Jacob Hecht, Vincente Romero, Fernando Nolan, Charles W. Kitchen, and Andres Dold, as sureties, have been decreed and adjudged to pay to said Gertrude E. Huntington, administratrix as aforesaid, and David L. Huntington, her husband, the sum of seventy-four thousand eight hundred and forty dollars and costs;
1020 and whereas said appeal hath been allowed by said supreme court of the Territory of New Mexico in open court:

Now, therefore, if the above-named William H. Moore, William C. Mitchell, John S. Watts, Henry Birnbaum, Jacob Hecht, Vincente Romero, Fernando Nolan, Charles W. Kitchen, and Andres Dold shall prosecute said appeal to the Supreme Court of the United States to effect, and answer all damages and costs if they fail to make their said appeal good, and shall pay any sum that may on said appeal be decreed to be paid by said appellants, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

W'M H. MOORE. [L. S.]
W'M C. MITCHELL. [SEAL.]
JOHN S. WATTS. [SEAL.]
HENRY BIRNBAUM. [SEAL.]
JACOB HECHT. [SEAL.]
VICENTE ROMERO. [SEAL.]
1021 FERNANDO NOLAN. [SEAL.]
C. W. KITCHEN. [SEAL.]
ANDRES DOLD. [SEAL.]
W. B. STAPP. [SEAL.]
CHARLES S. HOPKINS. [SEAL.]
JUAN M'A BACA. [SEAL.]
WILLIAM KRONIG. [SEAL.]
TRINIDAD ROMERO. [SEAL.]

Witness:
JOHN W. NOBLE.

The above bond is approved, the sureties therein being deemed sufficient for a supersedeas and appeal. Let the same be filed, and order of supersedeas entered.

J. G. PALEN, *C. J., &c.*
B. J. WATERS, *Asso. Justice.*

UNITED STATES OF AMERICA:
Territory of New Mexico:

This 31st day of January, A. D. 1871, personally appeared before me, the undersigned clerk of the supreme court of said Territory, William H. Moore, William C. Mitchell, John S. Watts, Henry Birnbaum,
1022 Jacob Hecht, Vicente Romero, Fernando Nolan, Charles W. Kitchen, Andres Dold, William B. Stapp, Charles S. Hopkins, Juan Maria Baca, William Kronig, and Trinidad Romero, all to me known, and each for himself acknowledged that he executed the annexed appeal-bond in the case of Gertrude E. Huntington, administratrix, &c., and David L. Huntington, her husband, versus William H. Moore and William C. Mitchell, of their own voluntary act and will, for the purposes therein expressed.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Santa Fé, New Mexico, this 31st day of January, A. D. 1871.

[SEAL.] W'M BREEDEN, *Clerk.*

1023 UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, clerk of the supreme court of said Territory of New Mexico, do hereby certify that the foregoing 1052 pages contain a full, true, and perfect transcript of the record of the cause of Gertrude E. Huntington, administratrix, &c., and David L. Huntington, her husband, in said court, including the transcript of the record of the said cause in the district court for the first judicial district of said Territory filed in said supreme court on the 22nd day of December, A. D. 1870, and of all papers filed and proceedings had in said cause in the said supreme court, as remains of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court this 16th day of October, A. D. 1871.

[SEAL.] W'M BREEDEN, *Clerk.*

(Indorsement on cover:) No. 433. William H. Moore, William C. Mitchell, et al., appellants, vs. Gertrude E. Huntington, adm'x, & David L. Huntington, her husband. New Mexico sup. court. Filed 29th November, 1871.